

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

THE EAGLE, STAR AND BRITISH DOMINIONS, a British Corporation,

Complainant,

vs.
M. G. TADLOCK, SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Corporation, MATT J. WALSH and FRANK E. GARBUTT, doing business under the firm name and style of GARBUTT-WALSH, a co-partnership, J. J. CAMILLO, HARBOR BOAT BUILDING COMPANY, a corporation, DAVID C. CAMPBELL and GEORGE E. CAMPBELL, doing business under the firm name and style of THE CAMPBELL MACHINE CO., a Corporation,

Defendants.

MATT J. WALSH and FRANK E. GARBUTT, doing business under the firm name and style of GARBUTT-WALSH,

Cross-Complainants,

vs.
M. G. TADLOCK, SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Corporation, J. J. CAMILLO, HARBOR BOAT BUILDING COMPANY, a Corporation, DAVID C. CAMPBELL and GEORGE E. CAMPBELL, doing business under the firm name and style of THE CAMPBELL MACHINE CO., a Co-partnership,

Cross-Respondents.

SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Corporation, and M. G. TADLOCK,

Appellants,

vs.
MATT J. WALSH and FRANK E. GARBUTT, doing business under the firm name and style of GARBUTT-WALSH,

Appellees.

Transcript of Record.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

FILED

NOV 11 1924

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

THE EAGLE, STAR AND BRITISH DOMINIONS, a British Corporation,

Complainant,

vs.

M. G. TADLOCK, SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Corporation, MATT J. WALSH and FRANK E. GARBUTT, doing business under the firm name and style of GARBUTT-WALSH, a co-partnership, J. J. CAMILLO, HARBOR BOAT BUILDING COMPANY, a corporation, DAVID C. CAMPBELL and GEORGE E. CAMPBELL, doing business under the firm name and style of THE CAMPBELL MACHINE CO., a Corporation,

Defendants.

MATT J. WALSH and FRANK E. GARBUTT, doing business under the firm name and style of GARBUTT-WALSH,

Cross-Complainants,

vs.

M. G. TADLOCK, SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Corporation, J. J. CAMILLO, HARBOR BOAT BUILDING COMPANY, a Corporation, DAVID C. CAMPBELL and GEORGE E. CAMPBELL, doing business under the firm name and style of THE CAMPBELL MACHINE CO., a Co-partnership,

Cross-Respondents.

SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Corporation, and M. G. TADLOCK,

Appellants,

vs.

MATT J. WALSH and FRANK E. GARBUTT, doing business under the firm name and style of GARBUTT-WALSH,

Appellees.

Transcript of Record.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
RESEARCH REPORT NO. 1000
1955

1. Introduction
2. Experimental
3. Results
4. Discussion
5. Conclusions
6. References
7. Appendix

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
RESEARCH REPORT NO. 1000
1955

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Affidavit of J. F. Du Paul in Support of Motion to Set Aside Default	167
Affidavit of Shelley J. Higgins in Support of Motion to Set Aside Default.....	171
Affidavit of Service by Mail of Answer of Cross- Defendants and Cross Bill of Respondents Garbutt- Walsh	96
Affidavit of Service of Citation.....	5
Answer and Cross-Complaint of Security Trust & Savings Bank of San Diego to Complaint.....	24
Exhibit A. Mortgage of Registered Vessel.....	35
Answer of M. G. Tatlock to Complaint.....	14
Answer of Matt J. Walsh and Frank E. Garbutt, etc. to Cross-Complaint on Bill of Security Trust & Savings Bank of San Diego.....	78
Answer to Cross-Bill of Respondents Matt J. Walsh and Frank E. Garbutt, etc.....	110
Exhibit B. Insurance Policy.....	126
Exhibit C. Insurance Policy.....	139
Answer to Cross-Bill of Respondents Matt J. Walsh and Frank E. Garbutt, etc.....	153
Appeal, Bond on.....	192

	PAGE
Appeal, Order Allowing Bond on Appeal.....	195
Appeal, Petition for.....	185
Assignment of Errors.....	187
Bond on Appeal.....	192
Citation	2
Clerk's Certificate	200
Complaint	6
Counter Affidavit in Opposition to Motion to Set Aside Default	176
Counter Praecipe	199
Cross Bill of Respondents Matt J. Walsh and Frank E. Garbutt doing business under the firm name and style of Garbutt-Walsh	86
Cross-Complaint of Security Trust & Savings Bank of San Diego	24
Cross-Complaint or Bill of Defendant and Cross-Com- plainant Security Trust & Savings Bank of San Diego	46
Decree	107
Decree, Interlocutory	74
Decree, Order that Cross-Bill be Taken as Confessed....	100
Default, Affidavit of J. F. Du Paul in Support of.....	167
Default, Affidavit of Shelly J. Higgins in Support of....	171
Default, Counter Affidavit in Opposition to Motion to Set Aside	176

	PAGE
Default, Motion for Entry of and for Order of Reference	99
Default, Motion to Set Aside.....	163
Default, Notice of Motion to Set Aside.....	165
Default, Order of July 1, 1936, Denying Motion to Set Aside Judgment.....	178
Findings of Fact and Conclusions of Law.....	101
Interlocutory Decree.....	74
Motion for Entry of Default and for Order of Reference	99
Motion for Severance on Appeal.....	181
Motion to Dismiss Complaint in Interpleader, for Order as to Money in Registry and for Costs.....	72
Motion to Set Aside Default.....	163
Names and Addresses of Solicitors.....	1
Notice of Motion for Severance.....	183
Notice of Motion to Set Aside Default.....	165
Opinion	54
Order Allowing Appeal and Severance.....	190
Order, Decree that Cross Bill be Taken as Confessed..	100
Order Denying Motion to Set Aside Default Judgment	178
Order of July 1, 1936, Denying Motion to Set Aside Default Judgment	178

	PAGE
Order of September 14, 1936, Approving Bond on Appeal	195
Order or Decree that Cross-Bill be taken as confessed..	100
Petition for Appeal with Prayer for Severance.....	185
Praecipe	196
Affidavit of Service of Praecipe.....	198
Praecipe, Counter	199
Severance, Motion for.....	181
Severance, Notice of Motion for.....	183
Severance, Order Allowing Appeal and Severance.....	190
Severance, Prayer for, Attached to Petition for Appeal	185
Summons and Severance.....	179

Names and Addresses of Solicitors.

For Appellants Security Trust & Savings Bank of San Diego, a corporation, and M. G. Tadlock:

LINDLEY & HIGGINS, Esqs.,
J. F. DU PAUL, Esq.,

825 Bank of America Building,
San Diego, California.

For Appellees Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh:

LLOYD S. NIX, Esq.,

436 Title Insurance Building,
Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION IN EQUITY

THE EAGLE, STAR AND BRIT-)
ISH DOMINIONS, a British Corpora-)
tion,)

Complainant,) No. EQ. 886-Y

vs.)

M. G. TADLOCK, SECURITY)
TRUST & SAVINGS BANK OF)
SAN DIEGO, a Corporation, MATT)
J. WALSH and FRANK E. GAR-)
BUTT, doing business under the firm)
name and style of G A R B U T T -)
W A L S H , a co-partnership, J. J.)
C A M I L L O , H A R B O R B O A T)
BUILDING COMPANY, a corpora-)
tion, DAVID C. CAMPBELL and)
G E O R G E E. CAMPBELL, doing)
business under the firm name and style)
of THE CAMPBELL MACHINE)
CO., a Corporation,)

CITATION

Defendants.)

.....)

MATT J. WALSH and FRANK E.)
GARBU**T**T, doing business under the)
firm name and style of GARBU**T**T-)
WALSH,)

Cross-Complainants,)

vs.)

M. G. TADLOCK, SECURITY)
TRUST & SAVINGS BANK OF)
SAN DIEGO, a Corporation, J. J. CA-)
MILLO, HARBOR BOAT BUILD-)
ING COMPANY, a Corporation, DA-)
VID C. CAMPBELL and GEORGE)
E. CAMPBELL, doing business under)
the firm name and style of THE)
CAMPBELL MACHINE Co., a Co-)
partnership,)

Cross-Respondents.)

THE PRESIDENT OF THE UNITED STATES OF
AMERICA TO: MATT J. WALSH and FRANK
E. GARBU**T**T, doing business under the firm name
and style of GARBU**T**T-WALSH, and to LLOYD
S. NIX, their Attorney:

YOU ARE HEREBY CITED AND ADMON-
ISHED to be and appear in the United States Circuit
Court of Appeals for the Ninth Circuit, at the City of

San Francisco, California, thirty (30) days from and after the date this Citation bears date, pursuant to an appeal allowed and filed in the Office of the Clerk of the District Court of the United States, for the Southern District of California, Central Division, from an Order denying the Motion of the cross-respondents hereinabove named to set aside default and the Decree based thereon in the above entitled action, which said order was entered on the 1st day of July, 1936, and from a Decree rendered by said Court in favor of cross-complainants Matt J. Walsh and Frank E. Garbutt, which said Decree was made and entered on the 12th day of June, 1936, wherein said M. G. Tadlock and the Security Trust & Savings Bank of San Diego, a Corporation, are appellants and you are Appellees, to show cause, if any there be, why the Order and Decree rendered against said Appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

WITNESS, the Honorable LEON R. YANKWICH, Judge of the United States District Court, for the Southern District of California, the 14th day of September, 1936.

Leon R Yankwich
Judge of the United States District Court,
for the Southern District of California.

[TITLE OF COURT AND CAUSE.]

AFFIDAVIT OF SERVICE OF CITATION.

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

STANLEY N. BARNES, being first duly sworn on oath says:

That on the 18th day of September, 1936, he personally served on Lloyd S. Nix, solicitor for appellees (originally cross-complainants) the attached citation by delivery to and leaving with the said Lloyd S. Nix personally, in the County of Los Angeles, in the Southern District of California, a full, true and correct copy of said citation.

Stanley N. Barnes

Subscribed and sworn to before me this 18th day of September, 1936.

[Seal] Marguerite Thompson,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed Sep. 23, 1936.

IN THE CENTRAL DIVISION OF
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF
CALIFORNIA.

THE EAGLE, STAR AND BRITISH)
DOMINIONS, a British corporation,
Complainant (

vs.)

M. G. TADLOCK, SECURITY ()
TRUST & SAVINGS BANK OF SAN
DIEGO, a corporation, M A T T J.)
WALSH and FRANK E. GARBUTT,
doing business under the firm name and (NO. Eq. 886-Y
style of GARBUTT-WALSH, a co-
partnership, J. J. CAMILLO, HAR-)
BOR BOAT BUILDING COMPANY,
a corporation, DAVID C. CAMPBELL ()
and GEORGE E. CAMPBELL, doing
business under the firm name and style)
of THE CAMPBELL MACHINE CO.,
a corporation, ()
Defendants.)

COMPLAINT IN INTERPLEADER

Comes now Complainant and alleges as follows :

I.

Complainant is now, and at all times herein mentioned was, a citizen and resident of the Kingdom of Great Brit-

ain, to-wit, a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain.

II

Defendant, M. G. Tadlock, is a citizen and resident of the State of California.

III

Defendant, Security Trust & Savings Bank of San Diego, is a citizen and resident of the State of California, to-wit, a corporation organized and existing under and by virtue of the laws of the State of California.

IV

Defendants, Matt J. Walsh and Frank E. Garbutt, are citizens and residents of the State of California, and they and each of them are doing business under the firm name and style of Garbutt-Walsh, a co-partnership.

V

Defendant, J. J. Camillo, is a citizen and resident of the State of California.

VI

Defendant, Harbor Boat Building Company, is a citizen and resident of the State of California, to-wit, a corporation organized and existing under and by virtue of the laws of the State of California.

VII

Defendants, David C. Campbell and George E. Campbell, and each and both of them, are citizens and residents of the State of California, doing business under the firm name and style of Campbell Machine Co., a co-partnership.

VIII

The amount in controversy herein exceeds the sum of \$500.00, exclusive of interest and costs; and also exceeds the sum of \$3,000.00, exclusive of interest and costs. The ground upon which the jurisdiction of this court depends is that this is a bill of interpleader in equity brought by a corporation engaged in the business of marine insurance, against defendants, each of whom is a bona fide claimant to the proceeds of the marine insurance policy hereinafter mentioned, and two of whom, defendants, Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, reside within the territorial jurisdiction of this court, within the provisions of subdivision 26 of section 41, Title 28, of the United States Code; and that said policy provides for the payment of more than \$500.00 as insurance; also, a ground upon which the jurisdiction of this court depends is the diversity of citizenship and alienage of the parties hereto.

IX

That on or about the 13th day of February, 1936, Complainant executed and delivered its policy of marine insurance, California Fishing Vessel Form 1936, upon the Diesel Vessel "Yellowtail" wherein and whereby Complainant undertook to pay to assured, M. G. Tadlock and/or Security Trust & Savings Bank of San Diego, and/or Garbutt & Walsh, a co-partnership, as their respective interests may appear, or order, the sum of Eight Thousand (\$8,000.00) Dollars in the event the vessel should become a total loss, and in accordance with the provisions of the policy, photostatic copy of which is attached hereto and made a part hereof with the same

force and effect as though set forth herein ad seriatim, said policy providing for the payment of premium in the sum of Eight Hundred Forty (\$840.00) Dollars. That on or about the 22nd day of February, 1936 said Diesel Vessel "Yellowtail" burned and sank at sea and became a total loss, owing to the perils insured against in said policy, and there thereupon became payable, according to the terms of the said policy, the sum of \$7,160.00 computed and made up as follows: face amount of the policy - \$8,000.00, less unpaid premium, \$840.00, net \$7,160.00. Complainant alleges that no part of the premium agreed to have been paid in the sum of \$840.00 has been paid to or received by it as consideration for the said policy, and that the said amount is now due and owing to said Complainant and properly deductible from the amount payable by it under said policy.

X

Each of the Defendants has made demand upon Complainant for all or some portion of the said sum of \$7,160.00; said demands, so far as Complainant is informed, arise out of advances made to the owners of said vessel, supplies furnished to said vessel, assignments of interests in said policy by said owner of said vessel, all of whom demand repayment to them by Complainant of the amounts owing to them from the former owner of the said vessel.

XI

Complainant disclaims any interest whatever in said sum, except to pay the same to the person lawfully entitled thereto; but by reason of the conflicting claims of said defendants, complainant cannot determine who is lawfully entitled thereto without danger of being harassed and damaged by various suits and actions concerning the

same; and by reason of said conflicting claims cannot safely pay any portion of said sum to any of the defendants without the equitable aid of this Honorable Court; that said adverse claims as aforesaid were made without collusion or connivance of complainant.

XII

Said complainant pays herewith into the registry of this Honorable Court the said sum of \$7,160.00.

XIII

The Defendants, Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, have commenced an action against complainant herein in the United States District Court for the Southern District of California, Central Division, and numbered 7525-S, and have issued and served summons thereon, and have threatened to, and unless restrained by this Honorable Court will, prosecute said action to the damage and detriment of complainant.

XIV

That Defendant, J. J. Camillo, has commenced an action against M. G. Tadlock, John Doe, Richard Roe and Doe Company, a corporation, in the Superior Court of the State of California, in and for the County of San Diego, and numbered 84131 in the records of said Court, and has issued and served summons thereon, and has issued and served Writ of Attachment in the sum of \$1,022.43 upon the Complainant herein, and has threatened to, and unless restrained by this Honorable Court will, prosecute said action to the damage and detriment of Complainant.

XV

That Defendant, Harbor Boat Building Co., a corporation, David C. Campbell and George E. Campbell, doing

business under the firm name and style of Campbell Machine Co., a co-partnership, and each and all of them, have by written notice served upon Complainant, demanded the payment to them and each of them of certain sums payable under said policy and have threatened to, and unless restrained by this Honorable Court will, prosecute actions against said Complainant to its damage and detriment.

XVI

That Defendant, Security Trust & Savings Bank of San Diego, a corporation organized and existing under and by virtue of the laws of the State of California, is named as one of the payees in the said policy as its interests may appear, and unless restrained by this Honorable Court will, upon information and belief, commence and prosecute an action or actions against this Complainant to the damage and detriment of the Complainant.

WHEREFORE, Complainant prays for the judgment and decree of this Honorable Court, as follows:

1. That said Defendants, M. G. Tadlock, Security Trust & Savings Bank of San Diego, a corporation, Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, a co-partnership, J. J. Camillo, Harbor Boat Building Company, a corporation, David C. Campbell and George E. Campbell, doing business under the firm name and style of the Campbell Machine Co., a corporation, be ordered, adjudged and decreed to interplead and settle between themselves their

rights in or claims to the proceeds of said policy, to-wit, said sum of \$7,160.00, herewith deposited in the registry of this court;

2. That upon such payment, Complainant be released from all claims and demands of every nature and kind held, claimed or asserted by Defendants, and each of them, against Complainant;

3. That Complainant have and recover its costs and attorneys' fees to be paid out of said sum of \$7,160.00;

4. That Defendants, and each of them, be permanently enjoined and restrained from commencing or prosecuting or continuing to prosecute any action at law or suit in equity or libel in admiralty in any court in any jurisdiction, against Complainant, arising out of or incident to the policy of insurance referred to herein, and that said injunction be made perpetual by final decree herein, and that meanwhile a temporary restraining order be issued out of and under the seal of this Honorable Court, enjoining and restraining Defendants, and each of them, from commencing or prosecuting or continuing to prosecute any action at law or suit in equity or libel in admiralty against Complainant on accounts of the matters and things herein set forth, until the further order of this Honorable Court;

5. For such other and further relief as may be meet and proper in the premises.

Chalmers G. Graham

Attorney for Complainant

STATE OF CALIFORNIA)
 ()
 CITY AND COUNTY OF) SS
 San Francisco ()

WALTER DAWES, being first duly sworn, deposes and says: That he is the Pacific Coast Manager of Talbot, Bird & Company, Inc., a corporation; that the said Talbot, Bird & Co., Inc. is the United States Marine Manager for the said Eagle Star & British Dominions, Complainant herein, and that as said representative of said Manager for said Complainant your Affiant is authorized to make this verification for and on its behalf; that he has read the foregoing, knows the contents thereof, and that the same is true except as to those matters alleged on information and belief, and as to those matters, he believes it to be true.

W. L. Dawes
 MANAGER

SUBSCRIBED & SWORN TO BEFORE ME this
 1st day of April, 1936.

[Seal]

Irene K. Applas

NOTARY PUBLIC in and for the State of California,
 residing at San Francisco

[Exb. "Policy of Insurance" hereto attached is the same as that attached to the answer of the Bank to the cross-bill of Garbutt-Walsh and marked "C" hereafter printed]

[Endorsed]: Filed Apr 3, 1936

[TITLE OF COURT AND CAUSE.]

ANSWER TO COMPLAINT IN INTERPLEADER
TO THE HONORABLE, THE JUDGES OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALI-
FORNIA, CENTRAL DIVISION:

The Answer of M. G. TADLOCK, defendant above named, to the Complaint in Interpleader on file herein, respectfully alleges:

I.

This defendant is informed and believes and therefore admits the fact to be that the Complainant is and was during the times mentioned in said Complaint in Interpleader, a citizen and resident of the Kingdom of Great Britain, and is and was during said times a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain.

II.

This defendant, M. G. Tadlock, admits that he is a citizen and resident of the State of California.

III.

This defendant admits that the defendant Security Trust & Savings Bank of San Diego is now and has been during all of the times mentioned in said Complaint in Interpleader, a citizen and resident of the State of California, and a corporation organized and existing under and by virtue of the laws of the State of California.

IV.

This defendant admits the allegations set forth in Paragraph IV of said Complaint in Interpleader, that defendants Matt J. Walsh and Frank E. Garbutt are and were during the times mentioned in said Complaint in Interpleader, citizens and residents of the State of California, and doing business under the firm name and style of Garbutt-Walsh, a co-partnership.

V.

This defendant admits that the defendant J. J. Camillo is a citizen and resident of the State of California.

VI.

This defendant admits that the defendant Harbor Boat Building Company is a citizen and resident of the State of California, and a corporation organized and existing under and by virtue of the laws of the State of California.

VII.

This defendant admits the allegations of Paragraph VII of said Complaint in Interpleader, to the effect that the defendants David C. Campbell and George E. Campbell, and each and both of them, are citizens and residents of said State of California, and doing business under the firm name of Campbell Machine Co., a co-partnership.

VIII.

This defendant, answering Paragraph VIII of said Complaint in Interpleader, admits that the amount in controversy herein exceeds the sum of \$500.00, exclusive of interest and costs; and also admits that the said amount in controversy exceeds the sum of \$3000.00 exclusive of interest and costs; and further admits that the defendant

Security Trust & Savings Bank of San Diego is a bona fide claimant to the proceeds of the marine insurance policy described in said Complaint in Interpleader, and that said policy of insurance provides for the payment of more than \$500.00 as insurance; and further admits that the Complaint in Interpleader filed herein is within the provisions of subdivision 26 of section 41, of Title 28, of the United States Code.

IX.

This defendant, answering the allegations of Paragraph IX of said Complaint in Interpleader, admits that on or about the 13th day of February, 1936, the Complainant executed and delivered its policy of marine insurance, California Fishing Vessel Form 1936, upon the Diesel Vessel "Yellowtail", wherein and whereby the complainant undertook to pay to assured M. G. Tadlock and/or Security Trust & Savings Bank of San Diego and/or Garbutt-Walsh, a co-partnership, as their respective interests may appear, or order, the sum of Eight Thousand Dollars (\$8,000.00), in the event the vessel should become a total loss, and in accordance with the provisions of said insurance policy;

And further admits that said policy provided for the payment of premium in the sum of \$840.00;

This defendant also admits, answering said Paragraph IX, that on or about the 22nd day of February, 1936, said Diesel Vessel "Yellowtail" burned and sank at sea and became a total loss, owing to the perils insured against in said policy, and there thereupon became payable, according to the terms of said policy, the sum of \$8,000.00, the face amount of said policy.

This defendant further admits that the premium for said insurance, amounting to the sum of \$840.00, has not been paid and that, therefore, the sum due upon said policy should be computed and made up as set forth in said Paragraph IX of said Complaint in Interpleader, as follows: face amount of policy, \$8,000.00; less unpaid premium, \$840.00; net, \$7,160.00.

X.

This defendant admits that defendant Security Trust & Savings Bank of San Diego has made demand upon said Complainant for said sum of \$7,160.00, but has no information or belief as to whether the other defendants named in said Complaint in Interpleader have made demand, and, therefore, is unable to answer that portion of said Complaint;

This defendant admits that said defendant bank has advanced money to this defendant, M. G. Tadlock, and that said money was used by said owner of said vessel in the building and equipping of said vessel, and that said defendant bank is the owner and holder of a mortgage on said vessel to secure the repayment of said money so advanced; and this defendant further admits that the other defendants named in said Complaint in Interpleader have furnished supplies to said vessel and have performed work and labor upon said vessel.

XI.

This defendant, answering Paragraph XIII of said Complaint in Interpleader, admits that the defendants Matt J. Walsh and Frank E. Garbutt, as a co-partnership, have commenced an action against the complainant herein in the United States District Court, for the Southern Dis-

trict of California, Central Division, and numbered 7525-S, and have issued and served summons therein, and have threatened to and will, unless restrained, prosecute said action to a final conclusion and further alleges, in answer to said Paragraph XIII, that in said action so commenced, this defendant has also been made a part defendant, and has been served with Summons therein, and that he has filed an answer in said action and Exceptions to the Libel in Personam therein filed and will defend said action in the event that said action is further prosecuted, unless said defendant should be restrained from further participating in said action.

XII.

This defendant, answering Paragraph XIV of said Complaint in Interpleader, admits that defendant J. J. Camillo has commenced an action against him and other defendants in the Superior Court of the State of California, in and for the County of San Diego, and has issued and served Writ of Attachment in the sum of \$1022.43 upon Complainant herein, and further alleges that said action has been prosecuted to a judgment in said Superior Court.

XIII.

This defendant, answering Paragraph XV of said Complaint in Interpleader, alleges that he has no information or belief concerning the allegations set forth in said Paragraph XV of said Complaint in Interpleader, and, therefore, is unable to answer said allegations concerning the defendant Harbor Boat Building Company, and David C. Campbell and George E. Campbell, doing business under the firm name and style of Campbell Machine Co., a co-partnership, having served written notice

upon Complainant, demanding the payment to them and each of them of certain sums payable under said policy of insurance.

XIV.

Answering Paragraph XVI of said Complaint in Interpleader, this defendant admits that he is named as one of the payees in said policy of insurance, as his interest may appear, and alleges that he appears in this action and interpleader for the purpose of protecting his rights in and to the proceeds of said policy of insurance; and alleges the fact to be that defendant Security Trust & Savings Bank of San Diego, by reason of said mortgage upon said boat "Yellowtail" has an equitable lien upon the entire proceeds of said policy of insurance and, as the owner and holder of said equitable lien, is entitled to the entire sum of said policy of insurance, to-wit: the said sum of \$7,160.00, together with interest thereon, all as more particularly hereinafter set forth by this defendant in his further answer to the Complaint in Interpleader, and that said proceeds of said insurance should be paid to said defendant bank as payment upon said mortgage, as hereinafter described.

—ooOoo—

FURTHER ANSWERING the Complaint in Interpleader, this defendant alleges:

I.

That on or about the 22nd day of October, 1934, the defendant M. G. Tadlock, who was then and there the owner of that certain oil screw Diesel Vessel named the "Yellowtail", made and executed in favor of defendant Security Trust & Savings Bank of San Diego a mortgage

on said oil screw Diesel Vessel "Yellowtail"; said Mortgage was executed, given and delivered to said defendant bank for the purpose of securing the payment of an Installment Note made October 22, 1934 for the sum of \$9,800.00, payable in monthly installments of \$450.00, on the 22nd day of each and every month, beginning January 22, 1935, and continuing until said principal sum had been fully paid, together with interest on deferred payments at the rate of seven per cent. per annum, payable monthly;

Said maritime mortgage on said oil screw Diesel Vessel "Yellowtail" was duly and regularly filed of record with the Collector of Customs in the District of San Diego, Port of San Diego, and received by said Collector of Customs of said District and Port on the 3rd day of November, 1934, and thereafter recorded in Liber 1349-2 of Mortgages, Folio 19; that no part of said Installment Note has been paid except the sum of \$1,550.00.

II.

That among the covenants and agreements of said mortgage herein described, this defendant M. G. Tadlock covenanted and agreed with said defendant bank that during the life of said mortgage and so long as any amount on the Installment Note should remain unpaid, that he, the said defendant M. G. Tadlock, would immediately procure said vessel "Yellowtail" to be insured against loss or damage by fire and against all marine risks and disasters in some good and responsible insurance company to be selected and approved by said defendant bank, and for an amount at least equal to the amount which should from time to time remain unpaid upon said indebtedness and interest thereon, and that he would keep such policy or policies of insurance renewed from time to

time and keep the same valid at all times, and that he would immediately assign and deliver to said defendant bank said policy of insurance so procured; and that pursuant to said covenant herein described, this defendant procured a policy of insurance covering said vessel "Yellowtail" in the sum of \$7,000.00, issued to this defendant and payable to the assured and to said defendant bank, as their interests might appear.

III.

That subsequent to the issuance of the above described policy of insurance, a new policy of insurance was secured by this defendant M. G. Tadlock, with the consent of said defendant bank, in the sum of \$8,000.00 upon said vessel "Yellowtail", and the original policy in the sum of \$7,000.00 was cancelled; that said policy for \$8,000.00 was numbered PC 59564 and was issued by The Eagle, Star and British Dominions, Complainant herein, through the agency of Talbot Bird & Co., Inc., a California corporation, employed by and representative of said Complainant;

That said latter policy of insurance No. PC 59564 was issued in lieu of the original policy of \$7,000.00 and for the purpose of increasing the amount of insurance on said boat in the sum of \$1,000.00, and was procured pursuant to the terms and provisions of said covenant of said mortgage requiring this defendant M. G. Tadlock to keep said vessel "Yellowtail" fully insured against fire and against marine risks and disasters.

IV.

That on or about the 22nd day of February, 1936, as a result of a gasoline explosion, said Diesel Vessel "Yellowtail" caught fire, burned and sank at sea within the juris-

diction of this Court, and became a total loss, owing to perils insured against in said policy; that all of the conditions of said policy of insurance on the part of the assured and said defendant bank to be performed have been fully performed, and proof of loss has been made pursuant to the terms and conditions of said policy, and that, as a result of said covenant in said mortgage and said insurance policy, and the total loss of said boat by fire, the defendant Security Trust & Savings Bank of San Diego became entitled to the proceeds of said insurance, as payment upon said mortgage hereinabove described; and that by reason of the premises, there is now due and owing to said defendant bank from the Complainant the face amount of said policy, \$8,000.00, less unpaid premium, \$840.00, balance \$7,160.00.

HAVING THUS MADE FULL ANSWER to all the matters and things contained in the Complaint in Interpleader, this defendant PRAYS:

That a decree be issued directing the payment of said sum of SEVEN THOUSAND ONE HUNDRED SIXTY DOLLARS (\$7,160.00) to the defendant SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, and that said defendant bank be directed to apply said payment upon the Installment Note and Mortgage hereinabove described;

That this defendant recover his costs and attorney fees; and

For such other and further relief as may be meet and proper in the premises.

Hamilton, Lindley & Higgins
J. F. DuPaul

Attorneys for Defendant M. G. Tadlock.

STATE OF CALIFORNIA)
) ss.
 County of San Diego)

M. G. TADLOCK, being first duly sworn, deposes and says:

That he is the answering Defendant in the above entitled action; that he has read the foregoing ANSWER TO COMPLAINT IN INTERPLEADER and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

M. G. Tadlock.

Subscribed and sworn to before me, this 11th day of April, 1936.

[Seal]

Rosa Lee Johnson,

Notary Public in and for the County of San Diego,
 State of California

[Endorsed]: Filed Apr 13-1936.

[TITLE OF COURT AND CAUSE.]

ANSWER TO COMPLAINT IN INTERPLEADER
TO THE HONORABLE, THE JUDGES OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALI-
FORNIA, CENTRAL DIVISION:

The Answer of SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a corporation, defendant above named, to the Complaint in Interpleader on file herein, respectfully alleges:

I.

This defendant bank is informed and believes and therefore admits the fact to be that the Complainant is and was during the times mentioned in said Complaint in Interpleader, a citizen and resident of the Kingdom of Great Britain, and was and is during said times a corporation organized and existing under and by virtue of the laws of the Kingdom of Great Britain.

II.

This defendant bank admits that the defendant M. G. Tadlock is a citizen and resident of the State of California.

III.

This defendant bank admits that it is now, and has been during all of the times mentioned in said Complaint in Interpleader, a citizen and resident of the State of California, and a corporation organized and existing under and by virtue of the laws of the State of California.

IV.

Defendant bank admits the allegations set forth in Paragraph IV of said Complaint in Interpleader, that defendants Matt J. Walsh and Frank E. Garbutt are and were during the times mentioned in said Complaint in Interpleader, citizens and residents of the State of California, and doing business under the firm name and style of Garbutt-Walsh, a co-partnership.

V.

Defendant bank admits that the defendant J. J. Camillo is a citizen and resident of the State of California.

VI.

Defendant bank admits that the defendant Harbor Boat Building Company is a citizen and resident of the State of California, and a corporation organized and existing under and by virtue of the laws of the State of California.

VII.

Defendant Bank admits the allegations of Paragraph VII of said Complaint in Interpleader, to the effect that the defendants David C. Campbell and George E. Campbell, and each and both of them, are citizens and residents of said State of California, and doing business under the firm name of Campbell Machine Co., a copartnership.

VIII.

Defendant bank, answering Paragraph VIII of said Complaint in Interpleader, admits that the amount in controversy herein exceeds the sum of \$500.00, exclusive of interest and costs; and also admits that the said amount in controversy exceeds the sum of \$3000.00, exclusive of interest and costs; and further admits that the defendant

bank is a bona fide claimant to the proceeds of the marine insurance policy described in said Complaint in Interpleader, and that said policy of insurance provides for the payment of more than \$500.00 as insurance; and further admits that the Complaint in Interpleader filed herein is within the provisions of subdivision 26 of section 41, of Title 28, of the United States Code.

IX.

Defendant bank, answering the allegations of Paragraph IX of said Complaint in Interpleader, admits that on or about the 13th day of February, 1936, the Complainant executed and delivered its policy of marine insurance, California Fishing Vessel Form 1936, upon the Diesel Vessel "Yellowtail", wherein and whereby the Complainant undertook to pay to assured M. G. Tadlock and/or Security Trust & Savings Bank of San Diego and/or Garbutt-Walsh, a co-partnership, as their respective interests may appear, or order, the sum of Eight Thousand Dollars (\$8,000.00), in the event the vessel should become a total loss, and in accordance with the provisions of said insurance policy;

And further admits that said policy provided for the payment of premium in the sum of \$840.00;

Deefndant bank also admits, answering said Paragraph IX, that on or about the 22nd day of February, 1936, said Diesel Vessel "Yellowtail" burned and sank at sea and became a total loss, owing to the perils insured against in said policy, and there thereupon became payable, according to the terms of said policy, the sum of \$8,000.00, the face amount of said policy.

This defendant bank further admits that the premium for said insurance, amounting to the sum of \$840.00 has not been paid and that, therefore, the sum due upon said policy should be computed and made up as set forth in said Paragraph IX of said Complaint in Interpleader, as follows: face amount of policy, \$8,000.00, less unpaid premium, \$840.00, net, \$7160.00.

X.

This defendant bank admits that defendant bank has made demand upon said complainant for said sum of \$7160.00, but has no information or belief as to whether the other defendants named in said Complaint in Interpleader have made demand, and, therefore, is unable to answer that portion of said Complaint;

Defendant bank, further answering Paragraph X of said Complaint, admits that its demand arises out of advances made to the owner of said vessel and further arises out of an assignment of the interest in said insurance policy by said owner to said defendant bank, and further arises by reason of the terms and provisions of said insurance policy and by reason of a covenant in a maritime mortgage held by said defendant bank upon said vessel "Yellowtail", as more particularly hereinafter in this Answer set forth and described.

XI.

Defendant bank, answering Paragraph XIII of said Complaint in Interpleader, admits that the defendants Matt J. Walsh and Frank E. Garbutt, as a co-partnership, have commenced an action against the complainant herein in the United States District Court, for the Southern District of California, Central Division, and numbered 7525-S, and

have issued and served Summons therein, and have threatened to and will, unless restrained, prosecute said action to a final conclusion; and further alleges, in answer to said Paragraph XIII, that in said action so commenced, this defendant bank has also been made a party defendant, and has been served with Summons therein, and that said defendant bank has filed an Answer in said action and Exceptions to the Libel in Personam therein filed and will defend said action in the event that said action is further prosecuted, unless said defendant bank should be restrained from further participating in said action.

XII.

This defendant bank, answering Paragraph XIV of said Complaint in Interpleader, alleges that it is informed and believes, and, therefore, admits the fact to be that defendant J. J. Camillo has commenced an action against M. G. Tadlock and other defendants in the Superior Court of the State of California, in and for the County of San Diego, and has issued and served summons thereon, and has issued and served Writ of Attachment in the sum of \$1022.43 upon the Complainant herein, and further admits, according to said information and belief of this defendant bank, that said action has been prosecuted to a Judgment in said Superior Court.

XIII.

This defendant bank, answering Paragraph XV of said Complaint in Interpleader, alleges that it has no information or belief concerning the allegations set forth in said Paragraph XV of said Complaint in Interpleader and, therefore, is unable to answer said allegations concerning the defendant Harbor Boat Building Company, and David C. Campbell and George E. Campbell, doing business under

the firm name and style of Campbell Machine Co., a co-partnership, having served written notice upon Complainant, demanding the payment to them and each of them of certain sums payable under said policy of insurance.

XIV.

Answering Paragraph XVI of said Complaint in Interpleader, this defendant bank admits that it is named as one of the payees in said policy of insurance as its interests may appear, and further admits that it appears in this action and interpleader for the purpose of protecting its rights in and to the proceeds of said policy of insurance; and further alleges the fact to be that said defendant bank has an equitable lien upon the entire proceeds of the said policy of insurance and, as the owner and holder of said equitable lien, is entitled to the entire sum of said policy of insurance, to-wit: the said sum of \$7,160.00, together with interest thereon, all as more particularly hereinafter set forth by said defendant bank, in its further Answer to the Complaint in Interpleader.

-----ooOoo-----

FURTHER ANSWERING the Complaint in Interpleader of the Complainant herein, this Defendant Bank alleges as follows:

I.

That on or about the 22nd day of October, 1934, the defendant M. G. Tadlock, who was then and there the owner of that certain oil screw Diesel Vessel named the "Yellowtail", made and executed in favor of defendant bank a mortgage on said oil screw Diesel Vessel "Yellowtail"; said Mortgage was executed, given and delivered to the said defendant bank for the purpose of securing the

payment of an Installment Note made October 22, 1934 for the sum of \$9,800.00, payable in monthly installments of \$450.00, on the 22nd of each and every month, beginning January 22, 1935, and continuing until said principal sum had been fully paid, together with interest on deferred payments at the rate of seven per cent. per annum, payable monthly;

Said maritime mortgage on said oil screw Diesel Vessel "Yellowtail" was duly and regularly filed of record with the Collector of Customs in the District of San Diego, Port of San Diego, and received by said Collector of Customs of said District and Port on the 3rd day of November, 1934, and thereafter recorded in Liber 1349-2 of Mortgages, Folio 19; that no part of said Installment Note has been paid except the sum of \$1,550.00;

A copy of said maritime mortgage on said oil screw Diesel Vessel "Yellowtail" is hereunto attached and made a part hereof as though fully set forth herein, and marked "Exhibit A".

II

That among other covenants and agreements set forth in said maritime mortgage, the said defendant M. G. Tadlock in said mortgage expressly covenanted and agreed not to suffer or permit said vessel covered by said mortgage to be run into debt in any amount; that during all of the times set forth in this Answer, the said maritime mortgage on said Diesel Vessel "Yellowtail" was in full force and effect, and that the said defendants Matt J. Walsh and Frank E. Garbutt and each of them, during all of the times mentioned herein, knew of the existence of said maritime mortgage and of the covenant therein set

forth forbidding the defendant M. G. Tadlock from suffering or permitting any debts to be incurred by said vessel covered by said maritime mortgage which might result in the creation of a maritime lien upon said boat covered by said mortgage.

-----ooOoo-----

AND AS A FURTHER ANSWER to said Complaint in Interpleader, this Defendant Bank alleges:

I.

That among the covenants and agreements of said mortgage herein described, and a copy of which is attached to this Answer and marked "Exhibit A", the defendant M. G. Tadlock covenanted and agreed with said defendant bank that during the life of said mortgage and so long as any amount on the Installment Note should remain unpaid, that he, the said defendant M. G. Tadlock, would immediately procure said vessel "Yellowtail" to be insured against loss or damage by fire and against all marine risks and disasters in some good and responsible insurance company to be selected and approved by this defendant bank, and for an amount at least equal to the amount which should from time to time remain unpaid upon said indebtedness and interest thereon, and that he would keep such policy or policies of insurance renewed from time to time and keep the same valid at all times, and that he would immediately assign and deliver to said defendant bank said policy of insurance so secured; and that pursuant to said covenant herein described, the said defendant M. G. Tadlock procured a policy of insurance covering said vessel "Yellowtail" in the sum of \$7,000.00, issued to said defendant M. G. Tadlock and payable to

the assured and to the defendant bank as their interests might appear.

II.

That subsequent to the issuance of the above described policy of insurance, a new policy of insurance was secured by said defendant M. G. Tadlock, with the consent of said defendant bank, in the sum of \$8,000.00 upon said vessel "Yellowtail", and the original policy in the sum of \$7,000.00 was cancelled; that said policy for \$8,000.00 was numbered PC 59564 and issued by The Eagle, Star and British Dominions, complainant herein, through the agency of Talbot Bird & Co., Inc., a California corporation, employed by and representative of said Complainant.

That said latter policy of insurance No. PC 59564 was issued in lieu of the original policy of \$7,000.00 and for the purpose of increasing the amount of insurance on said boat in the sum of \$1,000.00, and was procured pursuant to the terms and provisions of said covenant of said mortgage requiring said defendant M. G. Tadlock to keep said vessel "Yellowtail" fully insured against fire and against marine risks and disasters.

III.

That on or about the 22nd day of February, 1936, as a result of a gasoline explosion, said Diesel Vessel "Yellowtail" caught fire, burned and sank at sea within the jurisdiction of this Court, and became a total loss, owing to perils insured against in said policy; that all of the conditions of said policy of insurance on the part of the assured and this defendant bank to be performed have been fully performed, and proof of loss has been made pursuant to the terms and conditions of said policy,

and that, as a result of said covenant in said mortgage and said insurance policy and the total loss of said boat by fire, this defendant bank became the owner of an equitable lien on the proceeds to be paid pursuant to the terms and provisions of said insurance policy, and that by reason of the premises, there is now due and owing this defendant bank from the complainant, the face amount of said policy, \$8,000.00, less unpaid premium, \$840.00, balance \$7,160.00.

HAVING THUS MADE FULL ANSWER to all the matters and things contained in the Complaint in Interpleader, this Defendant Bank PRAYS:

That a decree be issued directing the payment of the said sum of SEVEN THOUSAND ONE HUNDRED SIXTY DOLLARS (\$7,160.00) to this defendant bank; and

That said decree recover from the defendants Matt J. Walsh and Frank E. Garbutt its costs and attorney fees; and

For such other and further relief as may be meet and proper in the premises.

Hamilton Lindley & Higgins

J. F. Du Paul

Attorneys for Defendant Security Trust & Savings
Bank of San Diego.

STATE OF CALIFORNIA)
 County of San Diego) ss.

J. B. HINES, being first duly sworn, deposes and says:

That he is the Cashier of SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, answering defendant herein; that he has read the foregoing ANSWER TO COMPLAINT IN INTERPLEADER and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information or belief, and as to those matters that he believes it to be true; that he makes this Affidavit on behalf of said SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, answering defendant.

J. B. Hines

Subscribed and sworn to before me, this 11th day of April, 1936.

[Seal]

Rosa Lee Johnson

Notary Public in and for the County of San Diego,
 State of California

EXHIBIT "A"

DEPARTMENT OF COMMERCE
BUREAU OF NAVIGATION

Upon receipt of this form by the Collector, duly executed, the time when received will be at once noted thereon, in its proper place (page 3), and record will be made as soon thereafter as practicable.

MORTGAGE OF REGISTERED VESSEL

(Art. 61, Customs Regulations of 1923)

FROM M. G. TADLOCK, _ _ _ _ _

(Insert names of mortgagors.)

TO _ _ _ BANK OF SAN DIEGO, a corporation, _ _ _

(Insert names of mortgagees.)

TO ALL TO WHOM THESE PRESENTS SHALL
COME, GREETING:KNOW YE, THAT M. G. TADLOCK, _ _ _ _ _

(Insert names of mortgagors.)

of the City of San Diego, in the State of California,
and.....owner of the Oil Screw
or vessel called the "YELLOWTAIL", of the burden of
eighteen (18) tons, or thereabouts, of the first part,
being justly indebted to

SECURITY TRUST & SAVINGS BANK OF
SAN DIEGO_ _ _ _ _
(insert names of mortgagees.)

of the City of San Diego, in the State of California, of the second part in the sum of NINETY-EIGHT HUNDRED AND NO/100 Dollars upon one certain note as hereinafter described; has, for the purpose of securing the payment of the said debt, and the interest thereon, granted, bargained, sold, and mortgaged and by these presents does grant, bargain, sell, and mortgage unto the said party of the second part, its successors and assigns, the whole of said oil screw or vessel, together with all of the mast, bowsprit, boat, anchors, cables, chains, rigging, tackle, apparel, furniture, and all other necessaries thereunto appertaining and belonging. The certificate of the last register of the said oil screw or vessel is in the words and figures following, to wit:

Insert Permanent or Temporary Permanent Register No. 28
--

Official Number Letters 220727

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
BUREAU OF NAVIGATION

Measured San Diego, Calif., 1919	Radio Call
Rebuilt at, 1.....	Service Passenger
Remeasured, 1.....	Number of Crew excl. master 5

Horsepower BHP. 100, Oil Engine

CERTIFICATE OF REGISTRY

IN PURSUANCE OF CHAPTER ONE,
TITLE XLVIII "REGULATION OF COM-
MERCE AND NAVIGATION," REVISED
STATUTES OF THE UNITED STATES

M. G. Tadlock, Route 2, Box 503, San Diego, California,
Having taken and subscribed the oath required by law,
and having sworn that he is a Citizen of the United
States and the sole owner of the vessel called the
"YELLOWTAIL", of San Diego, Calif., and that the
said vessel was built in the year 1919 at San Diego,
Cal., of wood as appears by P. R. No. 25, issued at
San Diego, Cal., April 30, 1934, now surrendered
property changed and said register having certified
that the said vessel is an oil screw; that she has one deck,
one mast, a Plain head, and a round stern; that her regis-
ter length is $58.2 \frac{\quad}{10}$ feet; her register breadth $17.7 \frac{\quad}{10}$
feet; her register depth $6.4 \frac{\quad}{10}$ feet; her height..... $\frac{\quad}{10}$

feet; that she measures as follows:

	Tons.	100ths.
Capacity under tonnage deck - - - - -	32	82
Capacity between decks above tonnage deck -		
Capacity of inclosure on the upper deck, viz;		
Forecastle—; bridge—; poop—; break—;		(Seal)
houses-round—; side—; charg—; radio—;		
excess hatchways—; light and air—;		
Gross Tonnage	32	82

DEDUCTIONS UNDER SECTION 4153, REVISED
STATUTES, AS AMENDED:

Crew space	3.53;	Master's cabin	3.53;
Steering gear	;	Anchor gear	;
Chart house	;	Boatswain's stores	;
		Donkey engine and boiler	;
		Radiohouse	;
Storage of sails	;	Propelling power (actual space 7.29), 32%	10.50;
TOTAL DEDUCTIONS			14 03
NET TONNAGE			18 —

The following-described spaces, and no others, have been omitted, viz: Forepeak—, aftpeak—, open fore-castle—, open bridge—, open poop—, open shelter deck—, anchor gear— steering gear—, donkey engine and boiler—, other machinery spaces—, light and air space over propelling machinery .87, companions, skylights—, wheel-house 1.79, galley 3.18, condenser, water-closets—, cabins—, and the owner having agreed to the description and admeasurement above specified, according to law, said vessel has been duly registered at this Port.

GIVEN under my hand and seal, at the port of San Diego, California, this 15th day of May, in the year one thousand nine hundred and thirty-four.

(1934)

(Impress Seal
of Collector)

(Sgd) Earl Beach SEAL
Act. Dep. Collector of Customs

(Sgd) A. J. Tyrer (Seal)
Commissioner of Navigation

(Dept. of Commerce)
(Seal)

TO HAVE AND TO HOLD the said Oil Screw or vessel and all the other before-mentioned appurtenances unto it the said Security Trust & Savings Bank of San Diego and to its successors and assigns, to the sole and only proper use, benefit, and behoof of itself the said Security Trust & Savings Bank of San Diego, and to its successors and assigns, forever :

PROVIDED ALWAYS, and the condition of these presents is such, that if the said party of the first part, his executors or administrators, shall pay or cause to be paid, to the said party of the second part, its successor or assigns, the debt, aforesaid, with the interest thereon, at the time or times and in the manner following, to wit: ONE NOTE, DATED OCTOBER 22, 1934, in amount of NINETY-EIGHT HUNDRED AND NO/100 DOLLARS (\$9,800), with interest from date on deferred payments until paid at the rate of seven (7) per cent. per annum, payable monthly. Said principal sum and interest payable in monthly installments of FOUR HUNDRED FIFTY AND NO/100 DOLLARS (\$450.00) or more each on the 22nd day of each and every third month, beginning on the 22nd day of January, 1935, and continuing until said principal sum has been fully paid.

INSTALLMENT NOTE

(Principal and interest in installments)

\$9,800.00 San Diego, California, October 22, 1934

In installments and at the times hereinafter stated, for value received - - - - I - - - - promise to pay Security Trust & Savings Bank of San Diego, - - - - or order, at its main office in San Diego, California, the principal sum of NINETY-EIGHT HUNDRED AND NO/100

- - - - Dollars with interest from date - - - on deferred payments until paid at the rate of seven (7) per cent per annum payable monthly - - - . Said principal sum and interest payable in monthly installments of FOUR HUNDRED FIFTY AND NO/100 Dollars (\$450.00) or more each on the 22nd day of each and every month, beginning on the 22nd day of January, 1935, and continuing until said principal sum has been fully paid.

Should the interest not be so paid, it shall become a part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of principal or interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in lawful money of the United States. Should suit be commenced, or an attorney employed to enforce the payment of this note, we agree to pay an additional sum of ten per cent on principal and accrued interest, as attorney's fees. This note is secured by a maritime mortgage on the American Oil Screw "Yellowtail."

Address 6917 Amherst St., San Diego, Calif.

(Sgd) M. G. Tadlock

(Sgd) Victorine Tadlock

3651 - 44th St., San Diego, Calif.

(Sgd) Guy H. Tadlock

(Sgd) Lois M. Tadlock

then these presents shall be void and of no effect, subject, however, to the provisions hereinafter contained; and the

said party of the first part hereby agrees to pay the debt aforesaid, and interest thereon, and to fulfill and perform each and every one of the covenants and conditions herein contained.

BUT IF DEFAULT be made in such payments, or in any of such payments, or if default be made in the prompt and faithful performance of any of the covenants herein contained, or if the said party of the second part shall at any time deem itself in danger of losing said debt, or any part thereof, by delaying the collection thereof until the expiration of the time above limited for the payment thereof, or if said party of the first part shall sell or attempt to sell said property, or any part thereof, or if the same shall be levied upon or taken by virtue of any attachment or execution against said first party, or if said first party shall remove, or attempt to remove, said vessel beyond the limits of the United States, or if said first party shall suffer and permit said vessel to be run in debt to an amount exceeding in the aggregate the sum of No. _____ dollars, or if said first party shall negligently or willfully permit said property to waste, or be damaged or destroyed, said party of the second part is hereby authorized to take possession of said goods, chattels, and personal property at any time, wherever found, either before or after the expiration of the time aforesaid, and to sell and convey the same, or so much thereof as may be necessary to satisfy the said debt, interest, and reasonable expenses, after first giving a notice of ten (10 - - - days, to be given by publication in some newspaper published in San Diego, California, - - and to retain the same out of the proceeds of such sale; the surplus (if any) to belong and to be returned to said party of the first part.

AND IT IS AGREED that on such sale the party of the first part, his executors, administrators, or assigns, may become the purchasers.

AND THE SAID party of the first part do further covenant and agree, to and with the said party of the second part its successors and assigns, that he will immediately procure said Oil Screw or vessel to be insured against loss or damage by fire, and against all marine risks and disasters, in some good and responsible insurance company or companies, to be selected and approved by the said party of the second part, for an amount at least equal to the amount which shall from time to time remain unpaid upon the said indebtedness and interest thereon, and that he will keep such policy or policies renewed from time to time, and keep the same valid at all times for the amount aforesaid; that he will do, suffer, or permit to be done, no act whereby said insurance would be liable to be vitiated or forfeited, and that he will immediately assign and deliver to said second party said policy or policies of insurance, having first duly obtained the proper consent of the insurance company or companies to such assignment, and that he will also promptly deliver to said second party the renewal certificates of said policies as a collateral security for the payment of said indebtedness. And if said first party shall fail to immediately procure, assign, and deliver such policy or policies as aforesaid, or shall at any time fail to immediately renew the same, and deliver the renewal certificates as aforesaid, the said party of the second part, its successors, or assigns, is hereby authorized to procure

said Oil Screw or vessel to be insured as aforesaid, and to keep the policy or policies renewed; and the amount which it has to pay therefor shall be considered, and is hereby declared to be, an additional indebtedness hereby intended to be secured, and shall be repaid to said party of the second part, its successors or assigns, on demand, and shall bear interest at seven (7) per cent from the time of such payment until repaid

AND IT IS HEREBY PROVIDED, that it shall be lawful for said first party, his executors and administrators, to retain possession of the property hereby mortgaged, and at his own expense to use and enjoy the same until said indebtedness shall become due. unless said second party should at any earlier date declare this mortgage forfeited for nonperformance of any of the covenants herein contained, or by virtue of any authority hereby conferred on said second part.

IN TESTIMONY WHEREOF, I the said M. G. Tadlock ha_ hereunto set my hand and seal this twenty-second day of October, in the year one thousand nine hundred and thirty-four.

Signed, sealed, and delivered in the presence of

M. G. Tadlock (SEAL)
----- (SEAL)

STATE OF CALIFORNIA,)
) ss:
 San Diego County)

I, Emma Geradehand, a notary public in and for the City and County of San Diego, California, do hereby certify that M. G. Tadlock, personally known to me as the same person whose name is subscribed to the annexed instrument of writing, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this second day of November, A. D. one thousand nine hundred and thirty-four

Emma Geradehand Notary Public
 Notary Public in and for the County of San Diego,
 State of California

(SEAL)

My commission expires Oct. 28, 1937

Received for record on the day of NOV 3-1934.
 A. D. 19 , at 11:15 o'clock AM

Earl Beach,
 Act. Dep Collector of Customs.

ON BACK OF MORTGAGE

Original Cat. No. 1348

Department of Commerce Bureau of Navigation

MORTGAGE

on

Oil Screw "YELLOWTAIL" from M. G. TADLOCK
to SECURITY TRUST & SAVINGS BANK OF SAN
DIEGO, a corporation.

OFFICE OF COLLECTOR OF CUSTOMS,

District of San Diego, Calif.

Port of San Diego, Calif.

Received for record on the 3rd day of Nov. A. D. 1934,
at 11:15 o'clock A. M. and recorded in Liber 1349/2 of
Mortgages, folio 19, etc.,

Earl Beach, /Collector of Customs
Act Dep

IN THE CENTRAL DIVISION OF THE DISTRICT
COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

SECURITY TRUST & SAVINGS)		
BANK OF SAN DIEGO, A Cor-)		
poration,)		
Defendant and)		
Cross-Complainant,)	No. Eq. 886-Y	
vs.)		
THE EAGLE, STAR AND BRIT-)		CROSS-COM-
ISH DOMINIONS, a British Cor-)		PLAINT OR
poration,)		BILL OF THE
Complainant and)		DEFENDANT
Cross-Defendant,)		AND CROSS-
and)		COMPLAIN-
MATT J. WALSH and FRANK)		ANT SECUR-
E. GARBUTT, doing business under)		ITY TRUST &
the firm name and style of GAR-)		SAVINGS
BUTT-WALSH, a co-partnership,)		BANK OF
J. J. CAMILLO, HARBOR BOAT)		SAN DIEGO.
BUILDING COMPANY, a Cor-)		
poration, DAVID C. CAMPBELL)		
and GEORGE E. CAMPBELL,)		
doing business under the firm name)		
and style of THE CAMPBELL)		
MACHINE CO., a Corporation,)		
Defendants and)		
Cross-Defendants.)		
))		

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Banking Corporation, Defendant and Cross-Complainant in the above entitled action, complains of THE EAGLE, STAR AND BRITISH DOMINIONS, a British Corporation, Complainant and Cross-Defendant, and of MATT J. WALSH and FRANK E. GARBUTT, doing business under the firm name and style of GARBUTT-WALSH, a co-partnership, J. J. CAMILLO, HARBOR BOAT BUILDING COMPANY, a corporation, DAVID C. CAMPBELL and GEORGE E. CAMPBELL, doing business under the firm name and style of THE CAMPBELL MACHINE COMPANY, a co-partnership, Defendants and Cross-Defendants, and alleges as follows:

I.

That on or about the 22nd day of October, 1934, the defendant M. G. Tadlock, who was then and there the owner of that certain oil screw Diesel Vessel named the "Yellowtail", made and executed in favor of this defendant and cross-complainant bank a mortgage on said oil screw Diesel Vessel "Yellowtail"; said Mortgage was executed, given and delivered to said defendant and cross-complainant bank for the purpose of securing the payment of an Installment Note made October 22, 1934 for the sum of \$9,800.00, payable in monthly installments of \$450.00, on the 22nd of each and every month, beginning January 22,

1935, and continuing until said principal sum had been fully paid, together with interest on deferred payments at the rate of seven per cent. per annum, payable monthly;

Said maritime mortgage on said oil screw Diesel Vessel "Yellowtail" was duly and regularly filed of record with the Collector of Customs in the District of San Diego, Port of San Diego, and received by said Collector of Customs of said District and Port on the 3rd day of November, 1934, and thereafter recorded in Liber 1349-2 of Mortgages, Folio 19; that no part of said Installment Note has been paid except the sum of \$1550.00.

II

That among the covenants and agreements of said mortgage herein described, and a copy of which is attached to the Answer to Complaint in Interpleader herein and marked "Exhibit A", the defendant M. G. Tadlock covenanted and agreed with this defendant and cross-complainant bank that during the life of said mortgage and so long as any amount on the Installment Note should remain unpaid, that he, the said defendant M. G. Tadlock, would immediately procure said vessel "Yellowtail" to be insured against loss or damage by fire and against all marine risks and disasters in some good and responsible insurance company to be selected and approved by this defendant and cross-complainant bank, and for an amount at least equal to the amount which should from time to time remain unpaid upon said indebtedness and interest thereon, and that he would keep such policy or policies of insurance renewed from time to time and keep the same valid at all times, and that he would immediately assign and deliver to said defendant and cross-complainant bank said policy of insurance so secured; and that pursuant to

said covenant herein described, the said defendant M. G. Tadlock procured a policy of insurance covering said vessel, "Yellowtail" in the sum of \$7,000.00, issued to said defendant M. G. Tadlock and payable to the assured and to this defendant and cross-complainant bank, as their interests might appear.

III.

That subsequent to the issuance of the above described policy of insurance, a new policy of insurance was secured by said defendant M. G. Tadlock, with the consent of defendant and cross-complainant bank, in the sum of \$8,000.00 upon said vessel "Yellowtail", and the original policy in the sum of \$7,000.00 was cancelled; that said policy for \$8,000.00 was numbered PC 59564 and issued by The Eagle, Star and British Dominions, complainant and cross-defendant herein, through the agency of Talbot Bird & Co., Inc., a California, corporation, employed by and representative of said Complainant and Cross-Defendant.

That said latter policy of insurance No. PC 59564 was issued in lieu of the original policy of \$7,000.00 and for the purpose of increasing the amount of insurance on said boat in the sum of \$1,000.00, and was procured pursuant to the terms and provisions of said covenant of said mortgage requiring said defendant M. G. Tadlock to keep said vessel "Yellowtail" fully insured against fire and against marine risks and disasters.

IV.

That on or about the 22nd day of February, 1936, as a result of a gasoline explosion, said Diesel Vessel "Yellowtail" caught fire, burned and sank at sea within the jurisdiction of this Court, and became a total loss, owing to

perils insured against in said policy; that all of the conditions of said policy of insurance on the part of the assured and this defendant and cross-complainant bank to be performed have been fully performed, and proof of loss has been made pursuant to the terms and conditions of said policy, and that, as a result of said covenant in said mortgage and said insurance policy and the total loss of said boat by fire, this defendant and cross-complainant bank became the owner of an equitable lien on the proceeds to be paid pursuant to the terms and provisions of said insurance policy, and that by reason of the premises, there is now due and owing this defendant and cross-complainant bank from the complainant and cross-defendant the face amount of said policy, \$8,000.00, less unpaid premium, \$840.00, balance \$7,160.00.

V

That the defendants and cross-defendants Matt J. Walsh and Frank E. Garbutt claim some right, title or interest in and to said proceeds of insurance and claim that said right, title or interest of the said defendants and cross-defendants Matt J. Walsh and Frank E. Garbutt is prior and superior to the said equitable lien of this defendant and cross-complainant bank; but this defendant and cross-defendant bank alleges that the said claim of the said Matt J. Walsh and Frank E. Garbutt is without right and is subordinate and inferior to the equitable lien of this defendant and cross-complainant bank.

This defendant and cross-complainant bank alleges that it is informed and believes and, basing this allegation upon such information and belief, alleges the facts to be that the defendants and cross-defendants J. J. Camillo, Harbor Boat Building Company, a corporation, and David C.

Campbell and George E. Campbell, doing business under the firm name and style of The Campbell Machine Company, a co-partnership, and each of them, claim some right, title or interest in and to the said proceeds of insurance; but this defendant and cross-complainant alleges that the claim of said defendants and cross-defendants and of each of them, is without right and is inferior and subordinate to the equitable lien of this defendant and cross-complainant bank to said proceeds, and further alleges that the equitable lien of this defendant and cross-complainant bank is prior and superior to any right or claim which defendants and cross-defendants, or either or any of them, might have in and to the said proceeds of insurance.

WHEREFORE, this Defendant and Cross-Complainant PRAYS:

(1) That this Honorable Court make its decree directing the payment to this defendant and cross-complainant bank of the sum of SEVEN THOUSAND ONE HUNDRED SIXTY DOLLARS (\$7,160.00);

(2) That this defendant and cross-complainant have and recover its costs and attorney fees from the defendants and cross-defendants Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, a co-partnership, J. J. Camillo, Harbor Boat Building Company, a corporation, and David C. Campbell and George E. Campbell, doing business under the firm name and style of The Campbell Machine Co., a co-partnership;

(3) That the equitable lien of this defendant and cross-complainant bank be declared to be superior and prior to the claim of the defendants and cross-defendants Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, a co-partnership, J. J. Camillo, Harbor Boat Building Company, a corporation, and David C. Campbell and George E. Campbell, doing business under the firm name and style of The Campbell Machine Company, a co-partnership;

(4) That this Honorable Court direct that a Subpoena issue, directed to the said defendants and cross-defendants, MATT J. WALSH and FRANK E. GARBUTT, doing business under the firm name and style of GARBUTT-WALSH, a co-partnership, J. J. CAMILLO, HARBOR BOAT BUILDING COMPANY, a corporation, and DAVID C. CAMPBELL and GEORGE E. CAMPBELL, doing business under the firm name and style of THE CAMPBELL MACHINE CO., a co-partnership, commanding them and each of them to appear and answer under oath all of the allegations of this Cross-Complaint;

(5) For such other and further relief as may be meet and proper in the premises.

Hamilton Lindley & Higgins

J. F. Du Paul

Attorneys for Defendant and Cross-Complainant Security Trust & Savings Bank of San Diego.

STATE OF CALIFORNIA)
 (ss.
 County of San Diego)

J. B. HINES, being first duly sworn, deposes and says:

That he is Cashier of SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, defendant and cross-complainant herein; that he has read the foregoing CROSS-COMPLAINT OR BILL and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information or belief, and as to those matters that he believes it to be true; that he makes this Affidavit on behalf of said SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, defendant and cross-complainant herein.

J. B. Hines

Subscribed and sworn to before me
 this 11th day of April, 1936.

[Seal] Rosa Lee Johnson

Notary Public in and for the County
 of San Diego, State of California.

[Endorsed]: Filed Apr 13—1936

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF
CALIFORNIA CENTRAL DIVISION

THE EAGLE, STAR AND BRIT-)	
ISH DOMINIONS, a British Corpo-)	
ration,)	
)	
)	Complainant,
)	
)	
)	vs.
)	
M. G. TADLOCK, SECURITY)	
TRUST & SAVINGS BANK OF)	
SAN DIEGO, a corporation, MATT)	
J. WALSH and FRANK E. GAR-)	No. Eq. 886-Y
BUTT, doing business under the firm)	OPINION
name and style of GARBUTT-)	
WALSH, a co-partnership, J. J.)	
CAMILLO, HARBOR BOAT)	
BUILDING COMPANY, a corpora-)	
tion, DAVID C. CAMPBELL and)	
GEORGE E. CAMPBELL, doing)	
business under the firm name and)	
style of THE CAMPBELL MA-)	
CHINE CO., a corporation,)	
)	
)	Defendants.

APPEARANCES:

For Complainant: Charles G. Graham, Esq. By Truman R. Young, Esq. of San Francisco

For Defendants: Lloyd S. Nix, Esq. of Los Angeles, for Garbutt-Walsh

Messrs. Hamilton, Lindley & Higgins J. Du Paul,
Esq. of San Diego for M. G. Tadlock

YANKWICH, District Judge:

Subdivision 26, Section 41, Title 28, U. S. C. A. (originally enacted on February 22, 1917, amended on May 8, 1926, and on January 20, 1936) gives district courts original jurisdiction of suits in equity begun by bills of interpleader or bills in the nature of interpleader filed by (among others) any person, firm, corporation, association or society, having issued a policy of insurance of the value of \$500.00 or more if (1) two or more adverse claimants, citizens of different states, are claiming to be entitled to the money and (2) the complainant has deposited it into the registry of the court there to abide the judgment of the court. Such a suit may be brought although the titles or claims of the conflicting claimants do not have a common origin, or are not identical but are adverse and independent of one another. The suit may be brought in the district court of the district in which one or more of the claimants reside or resides. The court is given power to issue process for all the claimants and to issue an order of injunction against all claimants enjoining them from "instituting or prosecuting any suit or proceeding in any state court or in any federal court on account of such money". The court is given power to hear and determine the cause and to discharge the complainant from further liability, to make the injunction permanent and to enter all orders or decrees which may be suitable and proper, as well as to issue all customary writs as are necessary or convenient to carry it out and enforce it. In an action at law against any person, firm, corporation, association or society, the defendant may set forth, by way of

equitable defense, matters otherwise available by way interpleader under this enactment, and join as parties claimants not already parties to the action. The statute is merely jurisdictional. It does not change the equitable principles of interpleader. Interpleader under this enactment is still governed by the general rules which govern it in federal courts. (Calloway v. Mils, (C. C. A. 6, 1929) 30 F (2) 14; National Fire Insurance Company v. Sanders, (D. C. Tex., 1929) 33 F (2) 157; Pacific Mutual Life Insurance Company v. Lusk (D. C. La., 1930) 46 F (2) 505) Acting under this section, the complainant, a British corporation, has filed its bill in interpleader. Coincident with its filing it has deposited in the registry of the court the sum of \$7160.00, the proceeds of a marine insurance policy executed at San Francisco, California, on February 13, 1936, upon the Diesel Vessel "Yellowtail", payable to M. G. Tadlock and/or Security Trust & Savings Bank of San Diego and/or Garbutt-Walsh, a co-partnership, as their respective interests may appear. The "Yellowtail" burned on February 22, 1936, and sank at sea and became a total loss, owing to the perils insured against in the policy. The Company admits its liability to the full extent of \$8,000.00, the amount of the policy from which is deducted, however, the sum of \$840.00, the unpaid premium. It disclaims any interest in the amount deposited in the registry except to pay the same to the person or persons lawfully entitled to receive it. Conflicting claims to portions of the amount have been asserted by various defendants. They need not be detailed here, because we are concerned with one only of the claimants, who in answer to the rule to show cause, has questioned the jurisdiction of the court to determine

its claim. The claimant is Garbutt-Walsh, a co-partnership, who prior to the filing of the bill in interpleader, filed, in admiralty, in our own court, a libel in personam against the complainant here, the assured and others, claiming a maritime lien upon the "Yellowtail" by reason of materials, supplies and equipment furnished in the sum of \$4358.06, and asking that the proceeds of the maritime insurance be impressed with a lien in that amount.

Ultimately, the question involved is whether we have the power, under the provisions of the enactment cited, to enjoin the prosecution of the libel in admiralty and to compel the libellant in that case to litigate his right to the fund in this proceeding, in interpleader, on the equity side of this court.

It would seem to me that the provision of the section giving district courts power to enjoin the claimants from "instituting or prosecuting any suit or proceeding in any State court or in any United States court" is direct authority for this court's exercising equity jurisdiction to enjoin a litigant from prosecuting any suit now pending before this court in admiralty. The legislative history of the section compels such conclusion. The direct authorization of injunctions against both state and federal courts was added by the amendment of 1926, and retained, with slight change of wording, by the amendment of 1936. Prior to the amendment of 1926, the courts had held that no power to issue injunctions against proceedings in state courts existed. (Essanay Film Manufacturing Company v. Kane (C. C. A. 3, 1920) 264 Fed 959 Lowther v. New York Life Insurance Co. (C. C. A. 3, 1922) 278 Fed. 405) In one of the first suits brought under the 1926 amendment (Fidelity & Deposit Company v. A. S.

Reid & Co. (D. C. Pa. 1926) 16 F (2) 502), Thompson, District Judge, thus interpreted the purpose of the enactment:

“Congress has provided in the act an appropriate remedy to bring into one court, where diversity of citizenship exists, the conflicting claims of adverse parties against a fund held by one having no interest in its distribution, in order that the rights of all claimants may be determined in an orderly manner in one proceeding, thus avoiding a multiplicity of suits. The Constitution has given to the court the capacity to take jurisdiction, and the act of Congress has supplied it. Therefore the two things necessary to create jurisdiction have vested in this court the power, not only to enjoin the institution of any suit or proceeding in another court on the bond, but also the prosecution of any such suit or proceeding already begun when the instant suit was brought.” (Italics added)

The very purpose of interpleader would be defeated if the court given jurisdiction to entertain the bill were not given the power to compel litigants to bring to its forum the adjudication of all the claims to a fund as to which the claimant is a mere stakeholder. The remedy of interpleader would be illusory unless the court had the power upon a rule to show cause to discharge the stakeholder from liability and to compel the claimants to litigate their respective rights to the fund. The complete exercise of such power demands the existence in the court of the power to enjoin the claimants from instituting or prosecuting actions in other courts pertaining to the claim. (See 32 Cor. Jur. page 111) Equity courts are the only ones which can exercise that power by virtue both of their general jurisdiction and of the special jurisdiction

given to them in matters relating to insurance. While the jurisdiction of district courts in admiralty, under the Constitution, is broader than the jurisdiction of English admiralty courts, courts of admiralty are yet courts of limited jurisdiction. (Benedict on Admiralty, 5th Ed. page 95) It is sometimes said that in exercising their jurisdiction, admiralty courts may resort to principles of equity. But this only means that the court construes the instruments with the liberality of a court of equity. (See O'Brien v. Miller, (1897) 168 U. S. 287)

"It is true," said Hough, District Judge, in United Transportation and Lighterage Company v. New York & Baltimore Transportation Line (1910) 180 Fed 902, "that a court of admiralty is often spoken of as one of equity, but that phrase means no more than that equitable principles are applied to the solution of matters of maritime jurisprudence. It is a perversion of the phrase to argue from it that, because admiralty seeks for aid in the analogies of equity, a maritime court is therefore entitled to draw within its jurisdiction matters primarily of non-maritime cognizance. The temptation is often strong to pursue a controversy between two litigants into all its ramifications, and endeavor to adjudicate them all in one decree. But in a court of limited jurisdiction (however important) the temptation should be carefully withstood." (Italics added.)

In "The Eclipse" (1890) 135 U. S. 599, Mr. Chief Justice Fuller said:

"While the court of admiralty exercises its jurisdiction upon equitable principles, it has not the characteristic powers of a court of equity. It cannot entertain a bill or libel

for specific performance or to correct a mistake (*Andrews v. Essex F. & M. Ins. Co.* 3 Mason, 6, 16); or declare or enforce a trust or an equitable title (*Ward v. Thompson*, 63 U. S. 22 How. 330 (16:249); *Hill v. The Amelia* 6 Ben. 475; *Kellum v. Emerson*, 2 Curt 79); or exercise jurisdiction in matters of account merely (*Grant v. Poillon*, 61 U. S. 20 How. 162 (15:235); *The Ocean Belle*, 6 Ben. 253) or decree the sale of a ship for an unpaid mortgage, or declare her to be the property of the mortgagees and direct possession of her to be given to them. *Bogart v. The John Jay*, 58 U. S. 17 How. 399 (15: 95)” (*Italics added*)

So also is the equity power to grant relief for mistake or fraud denied them (See *The Sappho* (D. C. So. Car. 1898) 89 Fed 366; *Simmons Transportation Co. v. Alpha Portland Cement Co.*, (D. C. N. Y. 1922) 286 Fed. 955))

A bill in interpleader is a creature of equity. If, as the cases just cited show, a court of admiralty cannot decree specific performance or relieve from fraud or mistake or declare or enforce a trust or an equitable title, or take an accounting, we cannot see how it can entertain a bill in interpleader. Benedict (Admiralty, 5th Ed. Vol. 1 Sec. 345), while stating that the practice of interpleader “has not prevailed in the admiralty”, claims that an admiralty court “will not hesitate to avail itself of the principle involved in that practice, where it is deemed necessary”. The authority for the statement is *Copp v. DeCastro & Donner Sugar Refining Co.*, Fed. Cas. #3215, 6 Fed Cas 520 (1875). There, the master of a brig filed a libel in personam against the consignee of a cargo of sugar. Before answering the bill, the consignee filed a petition to the court in which he alleged that the freight was claimed

also by an assignee of the charterer of the brig. The court allowed the prayer of the petition that the consignee pay the freight into court, be discharged from liability and restrained the master and the assignee from proceeding against him further. District Judge Benedict, in his opinion, maintained that a court of admiralty had the power to entertain a bill of interpleader and issue an injunction in aid of it. The authority of the case is weakened greatly by the fact that of the three litigants affected, two were already before the court and the third one, the libellant, had filed the original libel asking for the decree of the court. So the action of the court in that case was sustainable upon the ground that the non-consenting litigant having asked one kind of judgment, it was within the power of the court to decree a different method of adjudicating the rights. In fact, the opinion so states:

“In the present case, however, no question can arise in respect to jurisdiction over the parties, for two of them are already before the court and the third consents to appear and asks to be allowed to submit its rights to the determination of the court. Nor is there any room to doubt the power of the court to restrain the parties, as requested, for all parties consent to the restraint except the libellant Copp. And as to him, asking as he does the decree of this court, it is of course competent for this court to control his proceedings here, and I doubt not to prevent him from taking proceedings elsewhere, in case the freight be paid into court.” (Copp v. DeCastro & Donner Sugar Refining Co., *supra*, at page 521) (*Italics added.*) Upon theory, the decision cannot be followed: (1) because the purely equitable nature of a bill of interpleader places it outside of admiralty, (2) because the

latest decisions of our courts distinctly hold that an admiralty court cannot issue injunctive process in admiralty except in limitation of liability proceedings and to aid the execution of its final decree. (See Schoenamsgruber v. Hamburg American Line (1935) 294 U. S. 454; Streckfus Steamer Inc. v. Mayor and Aldermen (C. C. A. 5, 1936) 81 Fed (2) 298) Nor can a court in admiralty, having obtained jurisdiction, retain it for the purpose of doing complete justice after the manner of a court of equity. (See The Ada (C. C. A. 1918) 250 Fed 194; The Wabash, (D. C. Conn. 1923) 296 Fed 559; Yone Suzuki & Co. v. Central Argentine R. R. (D. C. N. Y. (1927) 19 Fed. (2) 645-653; The Kearney (C. C. A. 3 1926) 14 Fed (2) 949) On the other hand, this right is of the very essence of equity jurisdiction. In conformity with the principle that equity follows the law, equity, in determining adverse claims, brought to it through interpleader, can apply the legal principles governing such matters. (Pomeroy's Equity Jurisprudence, 4th Ed. Sec 425; 31 Cor. Jur. 121-122; Magniac v. Thomson (1853) 15 How. 281; Clinchfield Fuel Co. v. Titus (C. C. A. 4 1915) 226 Fed 574) Thus, assuming that, in interpleader, certain liens, rights or priorities established by maritime law were involved, equity would have full power to determine those rights according to the principles of maritime law. As said in Pratt v. Paris Gaslight & Coke Co. (1897) 168 U. S. 255:

“When vessels have passed into the hands of an assignee or receiver, it has been the constant practice of courts of bankruptcy and equity to respect the liens given by the maritime law, to marshal such liens and direct their payment, precisely as a court of admiralty would have

done. Scott's Case 1 Abb. (U. S.) 336; Re Kirkland, 14 Fed. Cas. 677; Re People's Mail Steamship Co. 3 Ben 226; High, Receivers, #138)" (Italics added)

The rules of interpleader in federal courts are rather simple. Disregarding many of the rules with which state courts have weighed it, they merely require, in addition to Federal Jurisdictional requirements, (1) the existence of a stakeholder having in his possession money or property, which (2) is claimed adversely by others, and (3) in which he claims no interest. (See Killian v. Ebbinghaus (1884) 110 U. S. 568; Groves v. Sentell (1894) 153 U. S. 465; Kingdom of Roumania v. Guaranty Trust Company of New York (D. C. N. Y. 1917) 244 Fed 195; Pacific Mutual Life Ins. Co. v. Lusk, (D. C. La. 1930) 46 F (2) 505; Conn. General Life Insurance Co. v. Yaw (D. C. N. Y. 1931) 53 F (2) 684; Zechriah Chafee, Jr., Interpleader in the United States Courts (1932) 41 Yale Law Journal, 1134; 42 Yale Law Journal, 41, at 54-56))

The bill on file conforms to these requirements other than jurisdictional. Complainant is merely a stakeholder, the claimants listed claiming either the entire fund or portions of it. M. G. Tadlock, Security Trust & Savings Bank and Garbutt-Walsh are all designated as payees. By the terms of the policy the loss, "is payable as their respective interests may appear", to the three persons. So we have three persons anyone of whom may claim the entire sum. In addition to this, we have a specific claim of Garbutt-Walsh for \$4358.06, one for \$1022.43 by another claimant and claims by other claimants, the amount of which is not stated. The aggregate of the claims exceeding the amount owed by the complainant

and deposited in court, the interest of each claimant is adverse to that of the other, as each will be interested in reducing the other's claim in order to prove his. (See Fidelity & Deposit Company of Maryland v. A. S. Reid & Co, supra)

When we come, however, to consider the fundamental jurisdictional requirement without which the district court cannot entertain such an action, we are confronted with the fact that the bill shows on its face that there are no "two or more adverse claimants, citizens of different states . . . claiming to be entitled to the money".

On the contrary, it appears that all claimants are citizens and residents of the State of California. It is the contention of the complainant that its foreign citizenship gives the court jurisdiction.

Subdivision 1 of Section 41, Title 28, U. S. C. A. gives the district court original jurisdiction "of all suits of a civil nature at common law or in equity . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.00 . . . or (c) is between citizens of a state and foreign states, citizens, or subjects". Provided the jurisdictional monetary minimum be present, this provision is authority for the right of an alien to sue and be sued in the district court. (See Barrow Steamship Company v. Kane (1898) 170 U. S. 100; Breedlove v. Nicolet (1833) 7 Pet 413; Betancourt v. Mutual Reserve Fund Life Insurance Co. (1900) (C. C. N. Y.) 101 Fed 305; Jewish Consolidation Association v. Solomon & Mariotti (C. C. A. 7 1914) 215 Fed 51) However, the special enactment we are considering has made jurisdiction to depend upon the exist-

ence of an additional condition,—the existence of claims by two or more adverse claimants who are citizens of different states. And the history of the enactment shows that the aim was to allow a remedy to insurance companies where claimants resided in different states. In the report of the Senate Judiciary Committee on the Act, (Senate Report 660, Serial 6899, Vol. 3, First Session, 64th Congress, 1915-1916) the object to be attained by the enactment of the section, in its original form was thus stated:

“The bill seeks to cure an evil. The evil is the inability of the holder of the fund, which is claimed by diverse claimants, who reside in different states, to obtain proper relief in a tribunal having jurisdiction over all such claimants. Under the present judicial system, there is no such tribunal, and therefore, no relief to the holder of such fund”. (*Italics added*)

Ever since its enactment, the courts to whom the question has been presented have held consistently that the existence of claimants of diverse citizenship is a condition precedent to the jurisdiction of the district court. In Mutual Life Insurance Company of New York v. Lott (D. C. Cal 1921) 275 Fed 363, Bledsoe, District Judge, held that under the original enactment of 1917, the district court had no jurisdiction to entertain an insurance interpleader where it appeared that one of the claimants was a resident and the other a citizen of the District of Columbia. Speaking of the jurisdictional basis of the statute, he said:

“It is to be observed that the only basis for the assertion of federal jurisdiction mentioned in the statute is that contained in the fact, which must be made to appear

from the allegations of the verified bill, 'that two or more adverse claimants, citizens of different states, are claiming or may claim to be entitled to such insurance or benefits.'" (Italics added)

The foreign citizenship of the plaintiff corporation in that case was held insufficient to confer jurisdiction. Under the 1926 amendment, it has been held similarly that diversity of citizenship of the claimants is essential to jurisdiction. The amendment of January 20, 1936, (49 Stat. c13 #1) did not change the requirement in this respect. So the cases arising under the original section and under the 1926 amendment are pertinent to the enactment as it stands today. We consider these cases. In Massachusetts Mutual Life Insurance Co. v. Grossman (D. C. N. Y. 1933) 4 Fed Sup 990, it is said that under the 1926 amendment

"jurisdiction is based on the fact that 'two or more adverse claimants, citizens of different States, are claiming to be entitled to such insurance.'" (Italics added)

The following quotation from Klaber v. Maryland Casualty Company (C. C. A. 8, 1934) 69 F (2) 934, is singularly apposite:

"The substantial differences between the 1917 Act and the 1926 Act are these: (1) The former did not specifically refer to casualty and surety companies; the latter does. (2) The former required that it be 'made to appear by such bill . . . that two or more adverse claimants, citizens of different states, are claiming or may claim to be entitled to such insurance or benefits.' The latter requires that such bill aver 'that two or more adverse claimants, citizens of different states, are claiming to be entitled

to such money or property or the penalty of such bond, or to such insurance, indemnity, or benefits'. (3) The former contained no authority for enjoining proceedings in other courts; the latter has such provision. (4) Under the former it was in some instances difficult to determine where the bill should be filed; the latter clarifies that situation.

"An interesting comparison of the two acts is to be found in a paper read before the Association of Life Insurance Counsel on December 8, 1926, by Mr. Joseph S. Conwell, counsel for the Penn Mutual Life Insurance Company. See, "Association of Life Insurance Counsel Proceedings", vol III p. 469. In speaking of the difference between the 1917 Act and the 1926 Act with respect to the averment as to claimants, he says:

"Considerable difficulty was experienced by the Committee with what is termed the "may claim" clause. Some of the members of the Senate sub-committee were not willing to permit the companies to obtain jurisdiction of the District Court where there was only a possibility that two or more persons "may claim" the proceeds of the policy, and hence it was necessary, in order to secure the passage of the Act of 1926, that the words "may claim" be stricken from the Act. Under the later Act, therefore two or more adverse claimants, citizen of different states, must actually claim to be entitled to the proceeds of the policy!

"Professor Chafee, in his article, "Interpleader in the United States Court," vol 41, Yale Law Journal, p. 1134, in a footnote on p. 1163, says:

"This change was made in order to secure the passage of the Act of 1926. Some of the members of the Senate

sub-committee were not willing to permit the companies to obtain the jurisdiction of the District Court when there was only a possibility of claims by two or more persons.'

"It is clear that, in order to invoke the enlarged powers granted to the United States District Courts by Congress with respect to certain bills of interpleader, the insurer must present a bill which not only contains the averments required by the statute, but which is sufficient under the principles of equity. The act does not deprive the federal courts of any jurisdiction which they previously held over bills of interpleader, nor does it change the equitable principles governing such bills. *Mutual Life Ins. Co. of N. Y. v. Bondurant* (C. C. A. 6) 27 F (2) 464; *National Fire Ins. Co. v. Sanders* (C. C. A. 5) 38 F (2) 212, 214; *Calloway v. Miles* (C. C. A. 6) supra, 30 F (2) 14. It merely provides that in certain cases and for the benefit of a class of disinterested stakeholders the courts may exercise powers that could not otherwise be exercised." (Italics added)

Three things are evident from this lengthy excerpt. (1) That the chief ground for the legislation was the desire to allow a stakeholder to bring into court claimants of diverse citizenship, some of whom were not residents of the district in which the suit was commenced. (2) That the statute sought to extend the powers of the court to questions to which they would not otherwise have jurisdiction and to overcome the effect of the decision in New York Life Insurance Co. v. Dunlevy (1916) 241 U. S. 518, and (3) that the legislators were, in view of this extension of power, determined that the claimants be actual claimants. (See Sanders v. Armour Fertilizer Works (1934) 292 U. S. 190) One can readily under-

stand the insistence upon diversity of citizenship of the claimants as a basis for giving the district court jurisdiction in such cases rather than allowing that diversity of citizenship be, as it is in ordinary cases, the criterion of jurisdiction. (22 U. S. C. A., Sec. 41, Subsection 1-c) In interpleader the claimants are the real contestants. It is logical, therefore, that their citizenship and not that of the stakeholder determine jurisdiction. Our attention has been called to certain language in Conn. General Life Insurance Co. v. Yaw, supra, which implies that a district court, under its equity jurisdiction, might entertain, upon the sole ground of diversity of citizenship, an interpleader of the type specifically provided for by Section 41, Subdivision 26, 28 U. S. C. A.

An examination of the case discloses, however, that the essential requirement of interpleader under that section,—namely diversity of the citizenship of the claimants,—was present. The complainant was a Connecticut corporation. Of the two claimants, one resided in Florida and the other in New York, where the action was instituted. And the opinion specifically recognizes the need for compliance with the special requirements of the section:

“The statute having set up the conditions upon which interpleader proceeding may be brought, such equitable right is restricted.” (Conn. General Life Ins. Co. v. Yaw, supra at page 686)

In Turman Oil Company v. Lathrop (D. C. Okla. 1934) 8 Fed Sup 870 and Penn. Mutual Life Insurance Co. v. Meguire (D. C. Ky. 1936) 13 Fed Sup. 976 bills were entertained based solely upon diversity of citizenship as between the plaintiff and defendant. But the first case

was clearly a non-statutory interpleader, while the second case sustains jurisdiction upon general equitable grounds and disregards entirely the requirement of diversity of citizenship contained in the interpleader statute. I do not think that the requirement of diversity of citizenship can be so disregarded. It is, as I have sought to indicate, an essential requirement. (See also Calloway v. Miles, (C. C. A. 6 1929) 30 F (2) 14, 15) The extension of the enactment originally intended for insurance companies only to all persons occupying the position of stakeholders lends support to this conclusion. Zechariah Chaffee, Jr., one of its authors, states that, by the Act of 1936,

“This remedy is now available to individuals and corporations generally if they are subjected to claims by residents of two or more states.” (“The Federal Interpleader Statute of 1936”, 45 Yale Law Journal (1936) 963, 966)

An interpretation which would, as the statute stands now, allow one form of interpleader under general equity principles based upon diversity of citizenship as between the plaintiff and the defendant, and another form under the statute, in cases involving diversity of citizenship as between plaintiffs and defendants with the jurisdictional minimum of \$3000.00, and another, dependent upon diversity of citizenship between claimants, with a jurisdictional minimum of \$500.00. I cannot conceive that the Congress, by enlarging the interpleader statute, has sought to create such a situation. Rather do I believe that they intended to cover the entire field by broadening the scope of what had previously been a limited enactment. So doing they viewed the citizenship or alienage of the stakeholder as entirely immaterial, and his interest in the controversy as that of a nominal party only (See Von Herberg v. City

of Seattle (C. C. A. 9 1926) 27 Fed (2) 547) grounded jurisdiction upon diversity of citizenship of the real parties in interest,—the claimants. The only important function of the court in interpleader is the settlement of controversies to the fund in its hands. If the diversity of citizenship of the claimants be disregarded, we would find the District Court, after the deposit of the money, settling controversies between citizens of the same state,—a jurisdiction which it does not and cannot constitutionally have. (Constitution of the United States, Article 3, Section 2, Clause 1)

It follows that there being no diversity of citizenship between the claimants here, the complainant's alienage cannot supply the absent jurisdictional factor. It is, therefore, not in a position to claim the benefit of the enactment by filing a bill in interpleader. Nor can the bill of interpleader be sustained upon general equitable grounds, in view of the jurisdictional restriction of the enactment herein discussed. The objecting claimant is, therefore, entitled to an order discharging the rule to show cause as to him. Under the circumstances, no interlocutory decree of any kind, even as to the answering claimants, should issue at the present time. It should abide further proceedings.

DATED the 30th day of April, 1936.

Leon R. Yankwich
United States District Judge.

[Endorsed]: Filed Apr. 30, 1936

Revised and refiled 5/23/36 as of 4/30/36.

[TITLE OF COURT AND CAUSE.]

MOTION TO DISMISS COMPLAINT IN INTER-
PLEADER, FOR ORDER AS TO MONEY IN
REGISTRY, AND FOR COSTS, ETC.

COME NOW Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, defendants in the above entitled cause, and move the court to dismiss the complaint in interpleader heretofore filed in the above entitled cause, upon the ground that the court has no jurisdiction of said complaint or cause for the reason that there is no diversity of citizenship between the claimants sought to be impleaded and particularly that it does not appear from said complaint nor is it a fact that two or more adverse claimants, citizens of different states, are claiming to be entitled to the money paid by complainant into the registry of the above entitled court, and that it appears from said complaint in interpleader filed in said cause that the jurisdiction of this court depends on diversity of citizenship of said claimants and that said diversity is not shown for all of said claimants are as appears citizens of the same state; and further move for an order that the sum of \$7,160.00 paid into the registry of this court by complainant be not withdrawn from said registry, but be there held and retained until further order of the court and pending the determination and disposition of the claim of said Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, as libelants in cause No. 7525-S now pending in the above entitled court.

WHEREFORE said defendants pray the court to dismiss said complaint or bill in interpleader and that they

recover their costs and attorney fees in this behalf incurred and for an order that said sum of \$7,160.00 be not withdrawn from the registry of the above entitled court as hereinbefore set forth.

Dated, May 6, 1936.

Lloyd S. Nix
LLOYD S. NIX

Solicitor for Defendants, Garbutt-Walsh

POINTS AND AUTHORITIES

Jurisdiction of complaint in interpleader by insurance company is based on the fact that two or more adverse claimants, citizens of different states, are claiming to be entitled to the money.

Subdivision 26, Sec. 41, Title 28, U. S. C. A.

Klaber v. Maryland Casualty Co., (C. C. A. 8, 1934), 69 Fed (2) 934

Mass. Mutual Life Insurance Co. v. Grossman (D. C. N. Y. 1933) 4 Fed. Sup. 990

Issue as to diversity of citizenship may be raised by motion to dismiss.

Rule 29, Rules of Practice, Courts of Equity of the United States

Rule 9, Rules of Practice, U. S. District Court, So. Dist. of Calif.

Simkins Federal Practice (Revised Edition) Sec. 440

28 U. S. C. A. sec. 571, 572

[Endorsed]: Filed May 7, 1936

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA CENTRAL DIVISION

IN EQUITY

THE EAGLE, STAR & BRIT-)
ISH DOMINIONS, A British)
corporation,)

Complainant,)

vs.)

M. G. TADLOCK, SECURITY)
TRUST & SAVINGS BANK)
OF SAN DIEGO, a corporation,)

M A T T J. W A L S H and)
FRANK E. GARBUTT, doing)

business under the firm name and)
style of GARBUTT-WALSH,)

a co-partnership, J. J. CAMIL-)
LO, HARBOR BOAT BUILD-)

ING COMPANY, a corporation,)
DAVID C. CAMPBELL and)

GEORGE E. CAMPBELL, do-)
ing business under the firm name)

and style of THE CAMPBELL)
MACHINE CO., a corporation,)

Defendants.)

No. EQ. 886-Y

INTERLOCUTORY
DECREE

It appearing to the satisfaction of the Court, and the Court finds, that this action was commenced on the 3rd day of April, 1936, by the Complainant above named, for the purpose of interpleading the Defendants above named, with respect to the fund of \$7,160.00, and that

contemporaneously therewith, Complainant paid into the registry of this Court said sum of \$7,160.00, and that process thereon was issued out of and under the seal of this Court; that thereupon such process was served upon the defendants, M. G. Tadlock, Security Trust & Savings Bank of San Diego, a corporation, Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of GARBUTT-WALSH, a co-partnership, J. J. Camillo, Harbor Boat Building Company, a corporation, David C. Campbell and George E. Campbell, doing business under the firm name and style of The Campbell Machine Co., a corporation, as shown by the return of the United States Marshal filed in the records of the above entitled Court and on the dates and times set forth therein. That upon the filing of the Complaint herein, and good cause appearing therefor, the above entitled court issued its Order to Show Cause and Temporary Restraining Order directed to each and all of the above named Defendants herein, and whereby it was, among other things, ordered, adjudged and decreed that the said Defendants, and each of them, be and appear before the above entitled Court Room on the 13th of April, 1936, at the hour of 10 o'clock, then and there to show cause, if any they have, why this Court should not grant an injunction enjoining and restraining the said Defendants, and each of them, their agents, servants and attorneys, from instituting or prosecuting or continuing to prosecute, any action at law or suit in equity or libel in admiralty, upon or concerning said policy of insurance, and why this Court should not enter a Decree that Complainant be discharged from all liability whatever upon said policy. And it further appearing that all of the said Defendants served herein have either appeared herein, or failing to appear, on

motion of solicitor for Complainant, default has been entered as to such Defendants failing to appear;

And it further appearing to the satisfaction of the Court that the objecting defendants, Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, a co-partnership, have withdrawn in open court on the day and date hereof their objections herein and by counsel stipulated for the signing and entry of consent interlocutory decree herein

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

1. That the Defendants, M. G. Tadlock, Security Trust & Savings Bank of San Diego, a corporation, Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, a co-partnership, J. J. Camillo, Harbor Boat Building Company, a corporation, David C. Campbell and George E. Campbell, doing business under the firm name and style of The Campbell Machine Co., a corporation, and each and all of them, their agents, servants and attorneys, be, and they and each and all of them are hereby permanently and perpetually enjoined and restrained from instituting or prosecuting or continuing to prosecute any action at law or suit in equity or libel in admiralty in any Court in any jurisdiction against Complainant arising out of or incident to the policy of insurance referred to in the Complaint herein, or on account of the matters and things set forth in the Complaint herein.

2. That the Defendants, and each and all of them, appearing herein and against whom no order of default

has been entered herein, appear or plead on or before twenty (20) days from the date of this decree.

3. That the Complainant be awarded its costs taxed in the sum of \$57.88 and solicitors' or attorneys' fee amounting to \$500.00, which the Court finds to be just and reasonable to be paid out and deducted from the sum of \$7,160.00.

4. That the remainder, or balance of said sum, be retained by the Clerk of the above entitled Court, to be distributed to the Defendants herein, as their interests may hereafter appear, and be established by final decree herein, and any balance thereof, if any there be, paid over and delivered to the Complainant herein.

Dated, this 11th day of May, 1936.

Leon R. Yankwich
United States District Judge.

APPROVED AS TO FORM this 11th day of May,
1936.

Lloyd S. Nix
Solicitor for Defendants, Matt J. Walsh
and Frank E. Garbutt, doing business
under the firm name and style of Gar-
butt-Walsh.

Decree entered and recorded May 11, 1936

R. S. ZIMMERMAN, Clerk
By Louis J. Somers,
Deputy Clerk

[Endorsed]: Filed May 11, 1936.

[TITLE OF COURT AND CAUSE.]

ANSWER OF CROSS-DEFENDANTS MATT J. WALSH and FRANK E. GARBUTT doing business under the firm name and style of GARBUTT-WALSH to CROSS-COMPLAINT OR BILL OF SECURITY TRUST & SAVINGS BANK OF SAN DIEGO

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

COME NOW the cross-defendants Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh and answering the cross-complaint or bill of defendant and cross-complainant Security Trust & Savings Bank of San Diego, a corporation, for themselves alone and for no other cross-defendant, admit, deny and allege:

I.

Answering Paragraph I of said cross-complaint or bill, these cross-defendants are informed and believe and therefore admit that defendant M. G. Tadlock on or about the 22nd day of October, 1934, was the owner of that certain Diesel Vessel called the "Yellowtail" and that on or about said date said M. G. Tadlock made and executed a mortgage covering said vessel to cross-complainant bank, for the purpose of securing the payment of a certain debt, evidenced by that certain promissory note, dated October 22, 1934, of M. G. Tadlock, Victorine Tadlock, Guy H. Tadlock and Lois M. Tadlock, in favor of said cross-

complainant, for the principal sum of \$9,800.00, payable in installments, as alleged in said Paragraph I, but deny that said mortgage was a maritime mortgage or gave rise to a maritime lien against said Diesel Vessel "Yellow-tail"; that these cross-complainants have no information or belief concerning the allegation that no part of said installment note has been paid except the sum of \$1550.00, and are, therefore, unable to answer said allegation; admit that said mortgage was filed for record with the Collector of Customs in the District of San Diego, Port of San Diego, and received by said Collector of Customs of said District and Port on the 3rd day of November, 1934.

II.

In answer to Paragraph II of said cross-complaint or bill, deny that said mortgage, or the copy thereof attached to the Answer of said Cross-complainant to the Complaint in Interpleader herein, contains a covenant or agreement as set forth in said Paragraph II; that cross-complainants have no information or belief concerning the remaining allegations of said paragraph and, therefore, are unable to answer the same or any part thereof.

III.

In answer to Paragraph III of said cross-complaint or bill, deny that subsequent to the issuance of the above described policy of insurance, a new policy of insurance was secured by said defendant, M. G. Tadlock, with the consent of defendant and cross-complainant bank, in the sum of \$8,000.00 upon said vessel "Yellowtail", and the original policy in the sum of \$7,000.00 was cancelled, or that said latter policy of insurance No. PC 59564 was issued in lieu of the original policy of \$7,000.00 and for

the purpose, or for the purpose, of increasing the amount of insurance on said boat in the sum of \$1,000.00, and was procured, or was procured, pursuant to the terms and provisions, or provisions, of said covenant of said mortgage requiring said defendant M. G. Tadlock to keep said vessel "Yellowtail" fully insured against fire and against marine risks and disasters, but on the contrary allege that between the 23rd day of December, 1935, and the 31st day of January, 1936, both dates inclusive, cross-defendants did furnish and supply to said Diesel Vessel "Yellowtail", at the port of Los Angeles in the district aforesaid, certain materials, supplies and equipment, and did perform certain work and labor, at the special instance and request of the master, agent and owner thereof, and with the knowledge and consent of said cross-complainant, of the reasonable and agreed value of \$4,858.06, and that cross-defendants did thereby obtain and acquire, and ever since have had, a maritime lien upon said Diesel Vessel "Yellowtail", her tackle, apparel, furniture, engines and equipment, for the said sum of \$4,858.06, no part of which has been paid except the sum of \$500.00, and that on the 5th day of February, 1936, the date of the commencement of the risk under said policy No. PC 59564, until the loss of said Diesel Vessel "Yellowtail" on or about the 22nd day of February, 1936, cross-defendants had an insurable interest in said Diesel Vessel "Yellowtail" to the extent of said sum of \$4,358.06, which said interest of cross-defendants was superior and prior to any right, title or interest of cross-complainant, at all times, and that on or about the 13th day of February, 1936, complainant, The Eagle, Star and British Dominions, a British corporation, made, executed

and delivered its certain policy of marine insurance, California Fishing Vessel Form 1936, numbered PC 59564, upon the said Diesel Vessel "Yellowtail," wherein and whereby said complainant undertook to pay to assured, M. G. Tadlock and/or Security Trust & Savings Bank of San Diego, and/or Garbutt & Walsh, a co-partnership (these cross-defendants), as their respective interests may appear, or order, the sum of Eight Thousand Dollars (\$8,000.00) in the event said vessel should become a total loss, covering the term at and from February 5, 1936, to February 5, 1937, and touching the adventures and perils as set forth in said policy, a photostatic copy of which is attached to the complaint in interpleader herein and is hereby referred to, as though set forth in full herein.

IV.

In answer to Paragraph IV of said cross-complaint or bill, admit that on or about the 22nd day of February, 1936, as a result of a gasoline explosion, said Diesel Vessel "Yellowtail" caught fire, burned and sank at sea, and became a total loss, owing to perils insured against in said policy, as alleged in said Paragraph; these cross-defendants have no information or belief concerning the allegation that all of the conditions of said policy of insurance on the part of the assured and this defendant and cross-complainant bank to be performed have been fully performed, and proof of loss has been made pursuant to the terms and conditions of said policy and

therefore are unable to answer said allegation or any part thereof; further answering said paragraph deny that, as a result of said or any covenant in said mortgage and said insurance policy, or said insurance policy, and the total loss of said boat by fire, or the total loss of said boat by fire, or otherwise, or at all, said defendant and cross-complainant bank became or was the owner of an equitable or any lien on the proceeds to be paid pursuant to the terms and provisions of said insurance policy, and further deny that there is now due and owing, or due or owing, said defendant and cross-complainant bank from said complainant and cross-defendant the face amount of said policy, \$8,000.00, less unpaid premium, \$840.00, balance \$7,160.00, or any other sum, but on the contrary allege that there is now due, owing and unpaid to these cross-defendants from the proceeds of said insurance policy now on deposit in the registry of this court the sum of \$4,358.06, together with interest thereon at the rate of 7% per annum from February 22, 1936, as aforesaid.

V.

In answer to Paragraph V of said cross-complaint or bill, admit that these cross-defendants claim some right, title or interest in and to said proceeds of insurance and claim that said right, title and interest is prior and superior to the said equitable lien claimed by said defendant and cross-complainant bank; further allege that the nature of the right, title and interest of these cross-defendants

is as hereinbefore set forth; further answering said paragraph admit that all of the defendants and cross-defendants named in said paragraph claim some right, title or interest in or to said proceeds but deny that the claim of any of said defendants and cross-defendants is superior or prior to the right, title and interest of these cross-defendants in and to said proceeds of insurance.

WHEREFORE, these cross-defendants pray:

1. That the maritime claim, lien and interest of these cross-defendants in and to the proceeds of said policy of insurance be declared and adjudged to be prior and superior to the claim of said cross-complainant bank and to the claim or claims of each and all other cross-defendants herein;
2. That this court order, adjudge and decree that the sum of \$4,358.06, together with interest at the rate of 7% per annum thereon from February 22, 1936, costs and attorneys' or solicitors' fees, be paid first out of the proceeds of said policy in the registry of this court; and
3. For such other and further relief as may be just and proper.

LLOYD S. NIX,
Lloyd S. Nix

Solicitor for Cross-defendants, Garbutt-Walsh.

STATE OF CALIFORNIA,)
) ss.
 County of Los Angeles,)

MATT J. WALSH, being first duly sworn, deposes and says: That he is one of the cross-defendants herein; that he has read the foregoing Answer of Cross-defendants Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style *to* Garbutt-Walsh and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information or belief, and as to those matters that he believes it to be true.

Matt J. Walsh

Subscribed and sworn to before me this 27th day of
 May, 1936.

[Seal]

Lillian M. Fish

NOTARY PUBLIC in and for said County and State.

[Endorsed]: Filed May 28-1936

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA CENTRAL DIVISION

IN EQUITY

THE EAGLE, STAR AND BRIT-)	
ISH DOMINIONS, a British Corpora-)	
tion,)	
	Complainant,) No. EQ. 886-Y
)
)
vs.)	
)
M. G. TADLOCK, SECURITY)	
TRUST & SAVINGS BANK OF)	
SAN DIEGO, a Corporation, MATT)	
J. WALSH and FRANK E. GAR-)	
BUTT, doing business under the firm)	
name and style of GAR BUTT -)	
WALSH, a co-partnership, J. J.)	
CAMILLO, HARBOR BOAT)	
BUILDING COMPANY, a corpora-)	
tion, DAVID C. CAMPBELL and)	
GEORGE E. CAMPBELL, doing)	
business under the firm name and style)	
of THE CAMPBELL MACHINE)	
CO., a Corporation,)	
)
)
	Defendants.)
.....)	

MATT J. WALSH and FRANK E.)
 GARBUTT, doing business under the)
 firm name and style of GARBUTT-)
 WALSH,)

Cross-Complainants,)

vs.)

M. G. TADLOCK, SECURITY)
 TRUST & SAVINGS BANK OF)
 SAN DIEGO, a Corporation, J. J. CA-)
 MILLO, HARBOR BOAT BUILD-)
 ING COMPANY, a Corporation, DA-)
 VID C. CAMPBELL and GEORGE)
 E. CAMPBELL, doing business under)
 the firm name and style of THE)
 CAMPBELL MACHINE Co., a Co-)
 partnership,)

Cross-Respondents.)

CROSS-BILL OF RESPONDENTS MATT J. WALSH
 AND FRANK E. GARBUTT, DOING BUSINESS
 UNDER THE FIRM NAME AND STYLE OF
 GARBUTT-WALSH

TO THE HONORABLE, THE JUDGES OF THE
 DISTRICT COURT OF THE UNITED STATES
 FOR THE SOUTHERN DISTRICT OF CALI-
 FORNIA, CENTRAL DIVISION:

COME NOW the respondents and cross-complainants
 MATT J. WALSH and FRANK E. GARBUTT, doing

business under the firm name and style of GARBUTT-WALSH and by way of cross-bill against respondents M. G. Tadlock, Security Trust & Savings Bank of San Diego, a corporation, J. J. Camillo, Harbor Boat Building Company, a corporation, David C. Campbell and George E. Campbell, doing business under the firm name and style of The Campbell Machine Co., a co-partnership, allege as follows:

I.

That cross-complainants Matt J. Walsh and Frank E. Garbutt are now, and were at all times herein mentioned, copartners doing business under the firm name and style of Garbutt-Walsh, having a principal place of business in the City of Los Angeles, County of Los Angeles, State of California, district aforesaid.

II.

That cross-respondent M. G. Tadlock at all times herein mentioned was the owner of a domestic vessel known as the Diesel Vessel "YELLOWTAIL", and is and was at the time of the filing of the complaint in interpleader herein a citizen and resident of the State of California, district aforesaid.

III.

That cross-respondent Security Trust & Savings Bank of San Diego at all times herein mentioned was, and now is, a banking corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the City of San Diego, County of San Diego, State of California, district aforesaid, and that said cross-respondent is, and

was at all times herein mentioned, the owner and holder of a certain mortgage upon said Diesel Vessel "YELLOWTAIL"; that said mortgage in writing was made by cross-respondent M. G. Tadlock, as mortgagor, in favor of cross-respondent Security Trust & Savings Bank of San Diego, a corporation, as mortgagee, dated October 22, 1934, acknowledged November 2, 1934, was received for record in the office of the Collector of Customs, District of San Diego, California, on November 3, 1934, and recorded in Liber 1349/2 of Mortgages, folio 19, to which record reference is hereby made.

IV.

That cross-respondent Harbor Boat Building Company at all times herein mentioned was, and now is, a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the City of Los Angeles, County of Los Angeles, State of California, district aforesaid.

V.

That cross-complainants are informed and believe and therefore allege that cross-respondents David C. Campbell and George E. Campbell at all times herein mentioned were, and now are, copartners doing business under the firm name and style of The Campbell Machine Co., with a principal place of business in the County of San Diego, State of California, district aforesaid.

VI.

That the complainant in interpleader herein, The Eagle, Star and British Dominions, a British corporation, has heretofore deposited in the registry of the above entitled court the proceeds of a certain marine insurance policy,

amounting to the sum of \$7,160.00, said insurance policy being numbered PC 59564 and covering the said Diesel Vessel "YELLOWTAIL", and the above entitled court, on the 11th day of May, 1936, having made and entered its interlocutory decree herein that the defendants appearing herein and against whom no order of default has been entered, appear or plead on or before twenty days from the date of such decree, that the complainant be awarded its costs and solicitors' or attorneys' fees, in the sum of \$57.88 and \$500.00 respectively, to be paid out and deducted from said sum of \$7,160.00, and that the remainder, or balance of said sum, be retained by the Clerk of the above entitled court, to be distributed to the defendants, as their interests may appear, and be established by final decree in *in* the above entitled cause and any balance thereof, if any there be, be paid over and delivered to said complainant.

VII.

That heretofore, to wit, between the 23rd day of December, 1935, and the 31st day of January, 1936, both dates inclusive, cross-complainants did furnish and supply to said Diesel Vessel "Yellowtail", at the port of Los Angeles in the district aforesaid, certain materials, supplies and equipment, and did perform certain work and labor, at the special instance and request of the master, agent and owner thereof, and with the knowledge and consent of cross-respondent Security Trust & Savings Bank of San Diego, of the agreed value of \$4,858.06; that the materials, supplies and equipment so furnished and supplied and the work and labor so performed were necessary and proper supplies for the said Diesel Vessel "Yellowtail" to make her intended voyage, or voyages,

and were furnished on the credit of the said Diesel Vessel "Yellowtail", her tackle, apparel, furniture, engines and equipment, and did go into the said Diesel Vessel "Yellowtail" and become a part thereof; that cross-complainants did thereby obtain and acquire, and ever since have had, a lien upon said Diesel Vessel "Yellowtail", her engines, tackle, apparel, furniture and equipment for the said sum of \$4,858.06, no part of which has been paid except the sum of \$500.00, and that, at the time of the commencement of the risk hereinafter referred to and thereafter until the loss hereinafter referred to, cross-complainants had an insurable interest in said Diesel Vessel "Yellowtail" in the sum of \$4,358.06.

VIII.

That on or about the 13th day of February, 1936, complainant, The Eagle, Star and British Dominions, a British corporation, made, executed and delivered its certain policy of marine insurance, California Fishing Vessel Form 1936, numbered PC 59564, upon the Diesel Vessel "Yellowtail", wherein and whereby said complainant undertook to pay to assured, M. G. Tadlock and/or Security Trust & Savings Bank of San Diego, and/or Garbutt & Walsh, a co-partnership (these cross-complainants), as their respective interests may appear, or order, the sum of Eight Thousand Dollars (\$8,000.00) in the event said vessel should become a total loss; said insurance being for a term at and from February 5, 1936, to February 5, 1937, beginning and ending with Noon, Pacific Standard Time, upon the body, tackle, apparel, ordnance, munitions, artillery, boat and other furniture of and in the Diesel Vessel called the "Yellowtail", and touching the adventures and perils as set forth in said

policy, a photostatic copy of which is attached to the complaint in interpleader of said The Eagle, Star and British Dominions, a British corporation, herein and is hereby referred to, as though set forth in full herein.

IX.

That on or about the 22nd day of February, 1936, as the result of a gasoline explosion, said Diesel Vessel "Yellowtail" caught fire, burned and sank at sea, and became a total loss owing to perils insured against in said policy, and there thereupon became payable, according to the terms of said policy, to these cross-complainants the said sum of \$4,358.06, which said sum, with interest, costs and attorneys' or solicitors' fees, is due, owing and unpaid to these cross-complainants from said sum of \$7,160.00 heretofore deposited in the registry of the above entitled court.

X.

That each of the cross-respondents claims some right, title or interest in or to the proceeds of said insurance, to-wit, the said sum of \$7,160.00, and cross-respondent Security Trust & Savings Bank of San Diego, a corporation, claims that its said right, title or interest is prior and superior to that of these cross-complainants; but these cross-complainants allege that said claim of said Security Trust & Savings Bank of San Diego, a corporation, is without right and that each and all of said claims is subsequent, subordinate and inferior to that of these cross-complainants.

BY WAY OF CROSS-BILL, and as a second, separate and further cause of complaint against respondents, and each of them, cross-complainants allege as follows:

I.

These cross-complainants reaver all of the matters and things in Paragraphs I, II, III, IV, V, VI and VIII of their first cause of complaint hereinbefore set forth, and pray that said paragraphs may be considered as forming a part of this paragraph and cause of complaint, the same for all intents and purposes as though all were set forth in full herein.

II.

That heretofore, to wit, between the 23rd day of December, 1935, and the 31st day of January, 1936, both dates inclusive, cross-complainants did furnish and supply to said Diesel Vessel "Yellowtail", at the port of Los Angeles in the district aforesaid, certain materials, supplies and equipment, and did perform certain work and labor, at the special instance and request of the master, agent and owner thereof, and with the knowledge and consent of cross-respondent Security Trust & Savings Bank of San Diego; that said materials, supplies and equipment so furnished and supplied and the work and labor so performed were reasonably worth the sum of \$4,858.06 and were necessary and proper supplies for the said Diesel Vessel "Yellowtail" to make her intended voyage, or voyages, and were furnished on the credit of the said Diesel Vessel "Yellowtail", her tackle, apparel,

furniture, engines and equipment, and did go into the said Diesel Vessel "Yellowtail" and become a part thereof; that cross-complainants did thereby obtain and acquire, and ever since have had, a lien upon said Diesel Vessel "Yellowtail", her engines, tackle, apparel, furniture and equipment for the said sum of \$4,858.06, no part of which has been paid except the sum of \$500.00, and that, at the time of the commencement of the risk hereinafter referred to and thereafter until the loss hereinafter referred to, cross-complainants had an insurable interest in said Diesel Vessel "Yellowtail" in the sum of \$4,358.06.

III.

That on or about the 22nd day of February, 1936, as the result of a gasoline explosion, said Diesel Vessel "Yellowtail" caught fire, burned and sank at sea, and became a total loss owing to perils insured against in said policy, and there thereupon became payable, according to the terms of said policy, to these cross-complainants the said sum of \$4,358.06, which said sum, with interest, costs and attorneys' or solicitors' fees, is due, owing and unpaid to these cross-complainants from said sum of \$7,160.00 heretofore deposited in the registry of the above entitled court.

IV.

That each of the cross-respondents claims some right, title or interest in or to the proceeds of said insurance, to wit, the said sum of \$7,160.00, and cross-respondent Security Trust & Savings Bank of San Diego, a corporation, claims that its said right, title or interest is prior and

superior to that of these cross-complainants; but these cross-complainants allege that said claim of said Security Trust & Savings Bank of San Diego, a corporation, is without right and that each and all of said claims is subsequent, subordinate and inferior to that of these cross-complainants.

WHEREFORE, these cross-complainants pray:

That this Honorable Court make its decree directing the payment first from the proceeds of said insurance policy on deposit in the registry of this court of the sum of Four Thousand Three Hundred Fifty-eight and 6/100 Dollars (\$4,358.06), together with interest thereon at the rate of 7% per annum from February 22, 1936, costs and attorneys' or solicitors' fees, to these cross-complainants;

2. That the maritime claim, lien and interest of these cross-complainants be declared and adjudged to be prior and superior to the claims of each and all of said cross-respondents herein, and that the claims of each and all of said cross-respondents be declared and adjudged to be subsequent, subordinate and inferior to that of these cross-complainants; and

3. For such other and further relief as may be just and proper in the premises.

Lloyd S. Nix

LLOYD S. NIX

Solicitor for Cross-Complainants.

STATE OF CALIFORNIA,)
 (ss.
 County of Los Angeles,)

MATT J. WALSH, being first duly sworn, deposes and says: That he is one of the cross-complainants herein; that he has read the foregoing cross-bill and knows the contents thereof that the same is true of his own knowledge, except as to the matters therein stated upon information or belief, and as to those matters that he believes it to be true.

Matt J. Walsh

Subscribed and sworn to before me this 27th day of
 May, 1936.

[Seal]

Lillian M. Fish

NOTARY PUBLIC in and for said county and State.

[Endorsed]: Filed May 28 - 1936.

[TITLE OF COURT AND CAUSE.]

AFFIDAVIT OF SERVICE BY MAIL OF ANSWER
 OF CROSS-DEFENDANTS AND CROSS-BILL
 OF RESPONDENTS GARBUTT-WALSH

STATE OF CALIFORNIA,)
) ss.
 County of Los Angeles,)

VIRGINIA V. WHITMORE, being first duly sworn,
 says:

That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the above entitled cause; that affiant's business address is 436 Title Insurance Building, 433 South Spring Street, Los Angeles, California; that on the 28th day of May, 1936, affiant served the Answer of Cross-defendants Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, to Cross-complaint or Bill of Security Trust & Savings Bank of San Diego on cross-complainant Security Trust & Savings Bank of San Diego in said cause, by placing a true copy thereof in an envelope addressed to the attorneys of record for said cross-complainant, at the office address of said attorneys, as follows:

“Hamilton, Lindley & Higgins and
J. F. Du Paul
Attorneys at Law
825 Bank of America Building
San Diego, California”

that on the 28th day of May, 1936, affiant served the Cross-Bill of Respondents Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh on cross-respondents M. G. Tadlock, Security Trust & Savings Bank of San Diego, a corporation, J. J. Camillo, and David C. Campbell and George E. Campbell, doing business under the firm name and style of The Campbell Machine Co., a co-partnership, in said cause, by placing true copies thereof in envelopes addressed to the respective attorneys of record for said cross-respondents, at the office addresses of said attorneys as follows:

“Hamilton, Lindley & Higgins and
J. F. Du Paul
Attorneys at Law
825 Bank of America Building
San Diego, California”

“Mr. Frank Pomeranz
Attorney at Law
833 Bank of America Building
San Diego, California”

“Mr. John W. Holler
Attorney at Law
Bank of America Building
San Diego, California

and by then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California; that there is delivery service by United States mail at the places so addressed, or there is a regular communication by mail between the place of mailing and the places so addressed.

Virginia V. Whitmore

Subscribed and sworn to before me this 1st day of
June, 1936.

[Seal]

Lilian M. Fish

NOTARY PUBLIC in and for said County and State.

[Endorsed]: Filed Jun. 3, 1936.

[TITLE OF COURT AND CAUSE.]

MOTION FOR ENTRY OF DEFAULT AND FOR
ORDER OF REFERENCE

COME NOW the cross-complainants, Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, and move the above entitled court that the default be entered of all cross-respondents who have not appeared in answer to the cross-bill of these cross-complainants heretofore filed herein.

Dated, this 10th day of June, 1936.

Lloyd S. Nix

LLOYD S. NIX,

Solicitor for said Cross-complainants.

[Endorsed]: Filed Jun. 12, 1936.

[TITLE OF COURT AND CAUSE.]

ORDER OR DECREE THAT CROSS-BILL BE
TAKEN AS CONFESSED

It appearing to the Court that the cross-bill of Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, in the above entitled cause was filed in this court on the 28th day of May, 1936, and that a copy of the same was served on the solicitors for cross-respondent Harbor Boat Building Co., a corporation, within ten days thereafter, to wit, on May 29, 1936, and on the solicitors for each of the other cross-respondents within ten days thereafter, to wit, on May 28, 1936, as set forth in the affidavits on filed herein, that more than ten days have elapsed since such service of said cross-complaint, and no answer has been filed by any of said cross-respondents, as required by Rule 31, IT IS ORDERED AND DECREED, on motion of Lloyd S. Nix, solicitor for said cross-complainants, that said cross-bill be taken as confessed as to each of said cross-respondents.

Dated, June 12, 1936.

Leon R. Yankwich

U. S. District Judge.

[Endorsed]: Filed Jun. 12, 1936

[TITLE OF COURT AND CAUSE.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above entitled cause came on regularly to be heard on the 12th day of June, 1936, before the Honorable Leon R. Yankwich, judge of the above entitled court, at the hour of three o'clock P. M.; Lloyd S. Nix and Lilian M. Fish appeared as solicitors for the cross-complainants Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, and the motion of said cross-complainants that the default of all cross-respondents who had not appeared in answer to their cross-bill having heretofore been granted and the default of all cross-respondents having been entered, evidence, both oral and documentary, was introduced by and on behalf of said cross-complainants, and the cause was submitted to the Court for its decision; and the Court having considered the facts as proved to it and the law with respect thereto, and, being fully advised in the premises, now makes its findings of fact as follows, to wit:

I.

That it is true that cross-complainants Matt J. Walsh and Frank E. Garbutt now are, and at the time of the filing of their cross-bill herein and at all times therein mentioned were, co-partners doing business under the firm name and style of Garbutt-Walsh, having a principal place of business in the City of Los Angeles, County of Los Angeles, State of California, district aforesaid.

II.

That it is true that cross-respondent M. G. Tadlock at all times mentioned in said cross-bill and at the time of the filing thereof and of the filing of the complaint in interpleader herein was a citizen and resident of the State of California, district aforesaid, and at all times mentioned in said cross-bill was the owner of a domestic vessel known as the Diesel Vessel "YELLOWTAIL".

III.

That it is true that cross-respondent Security Trust & Savings Bank of San Diego at all times in said cross-bill mentioned and at the time of the filing thereof was and now is a banking corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the City of San Diego, County of San Diego, State of California, district aforesaid, and that it is true that said cross-respondent at the time of the filing of said cross-bill and at all times therein mentioned was the owner and holder of a certain mortgage upon said Diesel Vessel "YELLOWTAIL": that it is true that said mortgage in writing made by said cross-respondent M. G. Tadlock, as mortgagor, in favor of cross-respondent Security Trust & Savings Bank of San Diego, a corporation, as mortgagee, dated October 22, 1934, acknowledged November 2, 1934, was received for record in the office of the Collector of Customs, District of San Diego, California, on November 3, 1934, and recorded in Liber 1349/2 of Mortgages, folio 19.

IV.

That it is true that cross-respondent Harbor Boat Building Co. at all times mentioned in said cross-bill and at

the time of the filing thereof, and now is, a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the City of Los Angeles, County of Los Angeles, State of California, district aforesaid.

V.

That it is true that cross-respondents David C. Campbell and George E. Campbell at all times mentioned in said cross-bill and at the time of the filing thereof, and now are, co-partners doing business under the firm name and style of The Campbell Machine Co., with a principal place of business in the County of San Diego, State of California, district aforesaid.

VI.

That it is true that pursuant to and in accordance with interlocutory decree herein complainant in interpleader, The Eagle, Star and British Dominions, a British corporation, has heretofore deposited in the registry of this court the proceeds of a certain marine policy of insurance, amounting to the sum of \$7,160.00, said insurance policy being numbered PC 59564 and covering the said Diesel Vessel "YELLOWTAIL".

VII.

That it is true that heretofore, to wit, between the 23rd day of December, 1935, and the 31st day of January, 1936, both dates inclusive, said cross-complainants did furnish and supply to said Diesel Vessel "YELLOWTAIL", at the port of Los Angeles in the district aforesaid, certain materials, supplies and equipment, and did perform certain work and labor, at the special instance and request of the master, agent and owner thereof, and

with the knowledge and consent of cross-respondent Security Trust & Savings Bank of San Diego, of the reasonable and agreed value of \$4,858.06; that it is true that the materials, supplies and equipment so furnished and supplied and the work and labor so performed were necessary and proper supplies for the said Diesel Vessel "YELLOWTAIL" to make her intended voyage, or voyages, and that it is true that said materials, supplies and equipment and said work and labor were furnished on the credit of the said Diesel Vessel "YELLOWTAIL", her tackle, apparel, furniture, engines and equipment, and did go into the said Diesel Vessel "YELLOWTAIL" and become a part thereof; that it is true that no part of said sum of \$4,858.06 has been paid except the sum of \$500.00.

VIII.

That it is true that on the 13th day of February, 1936, complainant The Eagle, Star and British Dominions, a British corporation, made, executed and delivered its certain policy of marine insurance, California Fishing Vessel Form 1936, numbered PC 59564, upon the said Diesel Vessel "YELLOWTAIL", wherein and whereby said complainant undertook to pay to assured, M. G. Tadlock and/or Security Trust & Savings Bank of San Diego, and/or Garbutt-Walsh, a co-partnership, cross-complainants herein, as their respective interests may appear, or order, the sum of \$8,000.00 in the event said vessel should become a total loss, said insurance being for a term at and from February 5, 1936, to February 5, 1937, beginning and ending with Noon, Pacific Standard Time, upon the body, tackle, apparel, ordnance, munitions, artillery, boat

and other furniture of and in the Diesel Vessel called the "YELLOWTAIL".

IX.

That it is true that on the 22nd day of February, 1936, as the result of a gasoline explosion, said Diesel Vessel "YELLOWTAIL" caught fire, burned and sank at sea, and that it is true that said Diesel Vessel "YELLOWTAIL" became a total loss owing to perils insured against in said policy.

AND AS CONCLUSIONS OF LAW from the foregoing facts the Court finds as follows:

I.

That on February 5th, 1936, and thereafter, to wit, until the loss of said Diesel Vessel "YELLOWTAIL" on February 22, 1936, cross-complainants Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, had an insurable interest in said Diesel Vessel in the sum of \$4,358.06.

II.

That by reason of the furnishing and supplying of materials, supplies and equipment and the performance of work and labor as aforesaid, said cross-complainants did obtain and acquire and ever thereafter did have a lien upon said Diesel Vessel "YELLOWTAIL", her engines, tackle, apparel, furniture and equipment for the sum of \$4,858.06, no part of which was paid except the sum of \$500.00.

III.

That the claims of each and all of the cross-respondents herein are subsequent, subordinate and inferior to that of said cross-complainants herein and that the right, title and interest, in and to the proceeds of said insurance, of said cross-complainants Matt. J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, is prior and superior to that of any of said cross-respondents.

IV.

That said cross-complainants are entitled to recover and receive from the proceeds of said insurance policy on deposit in the registry of this court the sum of \$4,358.06, together with interest thereon at the rate of 7% per annum from January 31, 1936, amounting to the sum of \$210.90, and their costs amounting to the sum of \$42.00 including solicitors' fees.

V.

That the maritime claim, lien and interest of said cross-complainants be declared and adjudged to be prior and superior to the claim of each and all of said cross-respondents and that the claims of each and all of said cross-respondents be declared and adjudged to be subsequent, subordinate and inferior to that of these cross-complainants.

LET DECREE ENTER ACCORDINGLY.

Dated, this 12th day of June, 1936.

Leon R. Yankwich
United States District Judge.

[Endorsed]: Filed Jun. 12, 1936

IN THE DISTRICT COURT OF THE UNITED
 STATES FOR THE SOUTHERN DISTRICT
 OF CALIFORNIA CENTRAL
 DIVISION - IN EQUITY

THE EAGLE, STAR AND BRITISH)
 DOMINIONS, a British corporation,)

Complainant,)

vs.)

M. G. TADLOCK, et al,)

Defendants.)

NO. Eq.
 886-Y

MATT J. WALSH and FRANK E. GAR-)
 BUTT, doing business under the firm name)
 and style of GARBUTT-WALSH,)

DECREE

Cross-complainants,)

vs.)

M. G. TADLOCK, SECURITY TRUST &)
 SAVINGS BANK OF SAN DIEGO, a)
 corporation, J. J. CAMILLO, HARBOR)
 BOAT BUILDING CO., a corporation,)
 DAVID C. CAMPBELL and GEORGE E.)
 CAMPBELL, doing business under the firm)
 name and style of THE CAMPBELL MA-)
 CHINE CO., a co-partnership,)

Cross-respondents.)

This cause came on regularly to be heard at this term, and was presented and argued by counsel; and thereupon, upon consideration thereof, it was ORDERED, ADJUDGED and DECREED as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the cross-complainants Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh do have and recover and receive from the proceeds of marine insurance policy No. PC 59564, on deposit in the registry of this court, the sum of \$4,358.06, together with interest thereon at the rate of 7% per annum from January 31, 1936, amounting to the sum of \$210.90, and their costs taxed in the sum of \$42.00, including solicitors' fees

And the clerk of said court is hereby ordered and directed to make disbursements forthwith in accordance with this decree.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the maritime claim, lien and interest of said cross-complainants be and hereby is declared and adjudged to be prior and superior to the claims of each and all of the cross-respondents herein, viz: M. G. Tadlock; Security Trust & Savings Bank of San Diego, a corporation; J. J. Camillo; Harbor Boat Building Co., a corporation; David C. Campbell and George E. Campbell, doing business under the firm name and style of The Campbell Machine Co., a co-partnership; and that the claims of each and all of said cross-respond-

ents be, and are hereby, declared and adjudged to be subsequent, subordinate and inferior to that of these cross-complainants.

DONE IN OPEN COURT, this 12th day of June, 1936.

Leon R. Yankwich
U. S. District Judge.

Decree entered and recorded June 12 1936

R. S. Zimmerman, Clerk
By Louis J. Somers, Deputy Clerk.

[Endorsed]: Filed Jun. 12, 1936.

[TITLE OF COURT AND CAUSE.]

ANSWER TO CROSS-BILL OF RESPONDENTS
MATT J. WALSH AND FRANK E. GARBUTT,
doing business under the firm name and style of
GARBUTT-WALSH.

TO THE HONORABLE, THE JUDGES OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALI-
FORNIA, CENTRAL DIVISION:

Comes now the SECURITY TRUST & SAVINGS
BANK OF SAN DIEGO, a Corporation, Cross-Respond-
ent above named, and answering the Cross-Bill of Re-
spondents MATT J. WALSH and FRANK E. GAR-
BUTT, doing business under the firm name and style of
GARBUTT-WALSH, admits, denies, and alleges as
follows:

I.

Admits the allegations of Paragraph I of said Cross-
Bill, that Cross-Complainants Matt J. Walsh and Frank
E. Garbutt are and were during all of the times mentioned
in said Cross-Bill, co-partners doing business under the
firm name and style of Garbutt-Walsh, with their princi-
pal place of business in the City of Los Angeles, County
of Los Angeles, State of California, District aforesaid.

II.

Admits that the allegations contained in Paragraph II
of said Cross-Bill are true, and that cross-respondent M.

G. Tadlock during all of the times mentioned in said Cross-Bill was the owner of a domestic vessel known as the Diesel Vessel "Yellowtail", and during said times was and is a citizen and resident of the State of California, district aforesaid.

III.

Admits the truth of the allegations contained in Paragraph III of said Cross-Bill, that this cross-respondent, during all of the times mentioned in said Cross-Bill was and now is a banking corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the City of San Diego, in said County, State and District; and that said Bank is and was during all of the times mentioned in said Cross-Bill the owner and holder of a certain mortgage upon the Diesel Vessel "Yellowtail", and that said mortgage was made by the cross-respondent M. G. Tadlock, as mortgagor, in favor of this cross-respondent Bank as mortgagee; that said mortgage was dated October 22, 1934, acknowledged November 2, 1934, and received for record in the office of the Collector of Customs, District of San Diego, California, on November 3, 1934, and recorded in Liber 1349/2 of Mortgages, folio 19.

IV.

Admits the allegations contained in Paragraph IV of said Cross-Bill, that cross-respondent Harbor Boat Building Company was during the times mentioned in said Complaint, and now is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business in said City of Los Angeles, in said County, State and District.

V.

Admits the truth of the allegations contained in Paragraph V of said Cross-Bill, that cross-respondents David C. Campbell and George E. Campbell during all of the times mentioned in said Cross-Bill were and now are co-partners doing business under the firm name and style of The Campbell Machine Co., with their principal place of business in said County and State and District.

VI.

Admits the truth of the allegations contained in Paragraph VI, of said Cross-Bill, that the complainant in interpleader herein, The Eagle, Star and British Dominions, a British corporation, has heretofore deposited in the registry of the above entitled Court the proceeds of a certain marine insurance policy amounting to the sum of \$7,160.00, which said insurance policy covered the Diesel Vessel "Yellowtail", and further admits that the above entitled Court, on May 11, 1936, made its interlocutory decree that the defendants appearing herein and against whom no order of default has been entered, appear or plead on or before twenty days from the date of such decree, and that the complainant be awarded its costs, and solicitors' or attorneys' fees, in the sum of \$57.88 and \$500.00 respectively, to be paid out of and deducted from said sum of \$7,160.00, and that the remainder or balance of said sum be retained by the Clerk of the said Court, to be distributed to the defendants as their interests might appear, and be established by final decree in the above entitled cause and any balance thereof, if any there be, be paid over and delivered to said complainant.

VII.

Cross-respondent Bank, in answering Paragraph VII of the Cross-Bill of the Cross-Complainants, alleges that it is informed and believes that said cross-complainants, during the times mentioned in said Paragraph VII, did furnish and supply to said Diesel Vessel "Yellowtail", at the port of Los Angeles, some materials, supplies and equipment, and that said cross-complainants did perform some work and labor upon said boat at the special instance and request of the master of said boat, but denies that said work and/or labor was performed at the special instance and/or request of the owner of said boat, and further denies that said work and/or labor was performed with the knowledge and/or consent of the cross-respondent Security Trust & Savings Bank of San Diego, and further denies that the work and labor which this cross-respondent is informed and believes was performed was of the agreed value of \$4,858.06, but alleges that said work and labor so performed, this cross-respondent bank is informed and believes, is of the agreed value of \$1,000.00.

Further answering said Paragraph VII, this cross-respondent bank alleges that said master and/or said owner and/or said agent of said Diesel Vessel "Yellowtail" were and each of them was without authority to request and/or order and/or contract for any work and/or labor and/or supplies and/or materials and/or equipment to be furnished or supplied to said Diesel Vessel "Yellowtail" between the 23rd day of December, 1935 and the 31st day of January, 1936, or at any other time since the 3rd day of November, 1934, and that said cross-complainants and each of them during all of the times set forth in

said Cross-Bill and in Paragraph VII thereof, knew that said master and/or said owner and/or said agent had no authority to request and/or order and/or contract for any work and/or labor and/or supplies and/or materials and/or equipment alleged to have been furnished and/or performed as in said Paragraph VII of said Cross-Bill set forth.

Further answering said Paragraph VII of said Cross-Bill, this cross-respondent Bank alleges that it has no information or belief sufficient to enable it to answer as to the allegation that the materials, supplies and equipment alleged to have been furnished and supplied and the work and labor alleged to have been performed were necessary and proper supplies for said Diesel Vessel "Yellowtail" to make her intended voyage or voyages, and that they or any of them were furnished on the credit of said Diesel Vessel "Yellowtail" or her tackle, furniture, apparel, engines and equipment and did go into the said Diesel Vessel "Yellowtail" and become a part thereof, and basing this denial on such lack of information or belief, denies that the materials, supplies and equipment which this cross-respondent bank is informed and believes were furnished said Vessel "Yellowtail" were necessary or proper supplies for said vessel to make her intended voyage or voyages, and further denies that said materials, supplies and/or equipment were furnished on the credit of said Diesel Vessel "Yellowtail" or her tackle, apparel, furniture, engines and/or equipment, or that any of said materials, supplies and/or equipment and/or work and/or labor did go into the vessel "Yellowtail" and become a part thereof.

Further answering said Paragraph VII of said Cross-Bill, this cross-respondent bank denies that said cross-complainants, by reason of furnishing materials, supplies and equipment and work and labor to said Diesel Vessel "Yellowtail", as alleged in said Paragraph VII, did thereby obtain and/or acquire a lien upon said Diesel Vessel "Yellowtail" or her engines or *tackel* or apparel or furniture or equipment for the sum of \$4858.06, or for any other sum greater in amount than the said sum of \$1,000.00, which this cross-respondent bank alleges that it is informed and believes was the agreed price for the materials, supplies and equipment actually furnished by said cross-complainants, and therefore this cross-respondent denies that at the time of the commencement of the risk set forth and referred to in said Cross-Bill and thereafter until the loss referred to in said Cross-Bill, said cross-complainants had an insurable interest in said Diesel Vessel "Yellowtail" for any sum greater in amount than \$1000.00.

VIII.

Answering Paragraph VIII of said Cross-Bill, this cross-respondent bank admits that on or about the 13th day of February, 1936, complainant, The Eagle, Star and British Dominions, a British Corporation, made, executed and delivered its certain policy of marine insurance, numbered PC 59564, upon the Diesel Vessel "Yellowtail", which said policy of insurance insured said cross-complainant M. G. Tadlock and/or Security Trust & Savings Bank of San Diego and/or Garbutt & Walsh, cross-complainants herein, as their respective interests might appear, in the sum of \$8000.00; and that said policy provided that in case of loss the said The Eagle, Star and British Do-

minions would pay said insurance to said cross-respondent M. G. Tadlock and/or cross-respondent Security Trust & Savings Bank of San Diego, and/or the cross-complainants, as their respective interests might appear, and that said policy of insurance covered the Diesel Vessel "Yellowtail", including the body, tackle, apparel, ordance, munitions, artillery, boat and other furniture and fixtures of the said Diesel Vessel "Yellowtail" for a term beginning February 5, 1936 and ending February 5, 1937, and that a true copy of said insurance policy is attached to the Complaint in Interpleader of said The Eagle, Star and British Dominions, a British corporation.

IX.

This cross-respondent admits the allegations contained in Paragraph IX of said Cross-Bill that on or about the 22nd day of February, 1936, as a result of a gasoline explosion, said Diesel Vessel "Yellowtail" caught fire, burned and sank at sea, and became a total loss, owing to perils insured against in said policy of insurance, but denies that thereafter there became payable, according to the terms of said policy or otherwise, to said cross-complainants the sum of \$4358.06, and denies that said sum, with interest, costs and attorneys' or solicitors' fees, or without interest, costs and/or attorneys' or solicitors' fees, is due and/or owing and/or unpaid to said cross-complainants from the sum of \$7,160.00 heretofore deposited in the registry of the above entitled Court, but alleges the fact to be that as a result of said loss and the terms of said insurance policy, there is due, owing and unpaid to this cross-respondent the said sum of \$7160.00, together with interest, costs and attorneys' fees.

X.

This cross-respondent bank admits that it claims some right, title and interest in and to the proceeds of said insurance, and admits that it claims that its right, title or interest is prior and superior to that of the cross-complainants, but denies that its claim is without right and further denies that its claim is subsequent, subordinate or inferior to that of these cross-complainants.

—oo0oo—

AND AS AN ANSWER TO THE SECOND, SEPARATE AND FURTHER CAUSE of complaint set up in said Cross-Bill, this cross-respondent admits, denies and alleges as follows:

I.

Answering Paragraph I of said second, separate and further cause of complaint, this cross-respondent bank refers to all the matters and things set forth in Paragraphs I to X inclusive of its answer hereinabove set forth, and respectfully asks this Honorable Court to consider said allegations as forming part of this answer to the second, separate and further cause of complaint with the same effect and to all intents and purposes as though all of said matters and things were set forth in full herein.

II

Answering Paragraph II of said second, separate and further cause of complaint, this cross-respondent bank alleges that it is informed and believes that between the 23rd day of December, 1935 and the 31st day of January, 1936, at the request of the master of said Diesel Vessel "Yellowtail", cross-complainants did furnish and supply

to said vessel certain materials, supplies and equipment and did perform certain work and labor, but denies that said materials, supplies and equipment so furnished and the work and labor so performed were furnished or performed with the knowledge and/or consent of this cross-respondent bank, and further denies that said materials, supplies and/or equipment so furnished and/or supplied and the work and/or labor so performed were reasonably worth the sum of \$4858.06, or any other sum in excess of \$1000.00.

And further answering said Paragraph II, this cross-respondent Bank alleges that it is informed and believes that said materials, supplies and equipment and said work and labor were furnished and performed at the agreed price of \$1000.00 and, therefore, alleges said fact to be true.

This cross-respondent bank has no knowledge or belief as to whether the materials, supplies and equipment so furnished and the work and labor so performed were necessary and proper supplies for the said Diesel Vessel "Yellowtail" to make her intended voyage or voyages and were furnished on the credit of said Diesel Vessel "Yellowtail", or her tackle, apparel, furniture, engines or equipment, and did go into the said Diesel Vessel "Yellowtail" and become a part thereof, and basing this denial on such lack of information and belief, denies that the materials, supplies and/or equipment so furnished and supplied, and the work and/or labor so performed were necessary and/or proper supplies for said Diesel Vessel "Yellowtail" to make her intended voyage or voyages, or that said materials, supplies and equipment or work and/or labor were furnished on the credit of said Diesel

Vessel "Yellowtail" or her tackle, apparel, furniture, engines or equipment;

This cross-respondent further denies that cross-complainants by reason of any of the facts set forth in said Paragraph II, obtained and/or acquired or ever since or now have a lien upon said Diesel Vessel "Yellowtail", or her engines, tackle, apparel, furniture and/or equipment for the sum of \$4858.06, or any other sum, or at all; and further denies that at the time of the commencement of the risk referred to in said Cross-Bill or thereafter until the loss occurred as set forth in said Cross-Bill, cross-complainants had an insurable interest in said Diesel Vessel "Yellowtail" for the sum of \$4358.06, or any other sum, or at all.

III.

Answering Paragraph III of said second, separate and further cause of complaint, this cross-respondent bank admits that on or about the 22nd day of February, 1936, as the result of a gasoline explosion, the Diesel Vessel "Yellowtail" was destroyed by fire and became a total loss, owing to perils insured against in said insurance policy, but denies that thereupon there became payable, according to the terms of said policy, to said cross-complainants the sum of \$4358.06, or any other sum, with or without interest, costs or attorneys' fees; and denies that said sum or any other sum, with or without interest, costs or attorneys' fees, is due and/or owing and/or unpaid to said cross-complainants from said sum of \$7160.00 heretofore deposited in the registry of the above entitled court.

IV.

Answering Paragraph IV of said second, separate and further cause of complaint, this cross-respondent bank admits that it claims some right, title and interest in and to the proceeds of said insurance, to-wit, the sum of \$7160.00, and admits that it claims said entire sum of \$7160.00, and that said claim is prior and superior to that of the cross-complainants; said cross-respondent bank further denies that said claim is without right or that said claim is subsequent or subordinate or inferior to that of the cross-complainants.

—oo0oo—

FURTHER ANSWERING SAID CROSS-BILL of the Cross-Complainants herein, this Cross-Respondent Bank alleges as follows:

I.

That on or about the 22nd day of October, 1934, the cross-respondent M. G. Tadlock, who was then and there the owner of that certain oil screw Diesel Vessel named the "Yellowtail", made and executed in favor of the cross-respondent bank a mortgage on said oil screw Diesel Vessel "Yellowtail" said Mortgage was executed, given and delivered to the said cross-respondent bank for the purpose of securing the payment of an Installment Note made October 22, 1934 for the sum of \$9800.00, payable in monthly installments of \$450.00, on the 22nd day of each and every month, beginning January 22, 1935, and continuing until said principal sum had been fully paid, together with interest on deferred payments at the rate of seven per cent. per annum, payable monthly

Said maritime mortgage on said oil screw Diesel Vessel "Yellowtail" was duly and regularly filed of record with the Collector of Customs in the District of San Diego, Port of San Diego, and received by said Collector of Customs of said District and Port on the 3rd day of November, 1934, and thereafter recorded in Liber 1349-2 of Mortgages, Folio 19; that no part of said Installment Note has been paid except the sum of \$1550.00;

A copy of said maritime mortgage on said oil screw Diesel Vessel "Yellowtail" is hereunto attached and made a part hereof as though fully set forth herein, and marked "Exhibit A".

II.

That among other covenants and agreements set forth in said maritime mortgage, the said cross-respondent M. G. Tadlock in said mortgage expressly covenanted and agreed not to suffer or permit said vessel covered by said mortgage to be run into debt in any amount; that during all of the times set forth in this answer, the said maritime mortgage on said Diesel Vessel "Yellowtail" was in full force and effect, and that the said cross-complainants Matt J. Walsh and Frank E. Garbutt and each of them, during all of the times mentioned herein, knew of the existence of said maritime mortgage and of the covenant therein set forth forbidding the cross-respondent M. G. Tadlock from suffering or permitting any debts to be incurred by said vessel covered by said maritime mortgage which might result in the creation of a maritime lien upon said boat covered by said mortgage.

AND AS A FURTHER ANSWER to said Cross-Bill, this cross-respondent bank alleges:

I.

That among the covenants and agreements of said mortgage herein described, and a copy of which is attached to this Answer and marked "Exhibit A", the cross-respondent M. G. Tadlock covenanted and agreed with said cross-respondent bank that during the life of said mortgage and so long as any amount on the Installment Note should remain unpaid, that he, the said cross-respondent M. G. Tadlock, would immediately procure said vessel "Yellowtail" to be insured against loss or damage by fire and against all marine risks and disasters in some good and responsible insurance company to be selected and approved by this cross-respondent bank, and for an amount at least equal to the amount which should from time to time remain unpaid upon said indebtedness and interest thereon, and that he would keep such policy or policies of insurance renewed from time to time and keep the same valid at all times, and that he would immediately assign and deliver to said cross-respondent bank said policy of insurance so secured; and that pursuant to said covenant herein described, the said cross-respondent M. G. Tadlock procured a policy of insurance covering said vessel "Yellowtail" in the sum of \$7000.00, which said policy was numbered PC 57892 and issued by The Eagle, Star and British Dominions, a British Corporation, and was made payable by its terms to the cross-respondent M. G. Tadlock and to Security Trust & Savings Bank of San Diego, cross-respondent herein, as their respective interests might appear, and said term of insurance so covered by said policy No. PC 57892 com-

menced October 8, 1935 and expired October 8, 1936; that a copy of said policy so issued, No. PC 57892, is attached hereto and marked "Exhibit B".

II.

That subsequent to the issuance of the above described policy of insurance, a new policy of insurance was secured by said cross-respondent M. G. Tadlock, with the consent of the cross-respondent bank, and with the knowledge, consent and at the request of the cross-complainants herein, in the sum of \$8000.00 upon said Diesel Vessel "Yellowtail", and the original policy in the sum of \$7000.00 was cancelled; the said policy for \$8000.00 was numbered PC 59564 and was issued by The Eagle, Star and British Dominions, complainant herein;

That said latter policy of insurance No. PC 59564 was issued in lieu of the original policy of \$7000.00 and for the purpose of increasing the amount of insurance on said boat in the sum of \$1000.00, and was procured pursuant to the terms and provisions of said covenant of said mortgage requiring said cross-respondent M. G. Tadlock to keep said vessel "Yellowtail" fully insured against marine risks and disasters. A copy of said policy of insurance No. PC 59564 is hereunto attached, marked "Exhibit C" and made a part hereof.

III.

That on or about the 22nd day of February, 1936, as the result of a gasoline explosion, said Diesel Vessel "Yellowtail" caught fire, burned and sank at sea within the jurisdiction of this Court, and became a total loss, owing to perils insured against in said policy; that all of the conditions of said policy of insurance on the part of the

assured and this cross-respondent bank to be performed have been fully performed, and proof of loss has been made pursuant to the terms and conditions of said policy; and that, as a result of said covenant in said mortgage and said insurance policy and the total loss of said boat by fire, this cross-respondent bank became the owner of an equitable lien on the proceeds to be paid pursuant to the terms and provisions of said second insurance policy, and that by reason of the premises, there is now due and owing this cross-respondent bank from the complainant in interpleader the face amount of said policy, \$8000.00, less unpaid premium, \$840.00, balance \$7160.00.

Having thus made full answer to all the matters and things contained in said Cross-Bill, this Cross-Respondent Bank PRAYS:

That Cross-Complainants take nothing by their Cross-Bill;

That a decree be issued directing the payment of the said sum of \$7160.00 to this cross-respondent bank, and that said decree provide that cross-respondent bank recover from cross-complainants Matt J. Walsh and Frank E. Garbutt its costs and attorneys' fees; and for such other and further relief as may be meet and proper in the premises.

Lindley & Higgins

J. F. Du Paul

Attorneys for Cross-Respondent Security Trust & Savings
Bank of San Diego.

STATE OF CALIFORNIA)
) ss.
 County of San Diego)

A. J. Sutherland, being first duly sworn, deposes and says:

That he is Vice-President of SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, cross-respondent herein; that he has read the foregoing ANSWER to CROSS-BILL and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information or belief and as to those matters that he believes it to be true; that he makes this Affidavit on behalf of said SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, cross-respondent herein.

A. J. Sutherland

Subscribed and sworn to before me, this 15 day of June, 1936.

[Seal]

Anna L. Gaughen

Notary Public in and for the County of San Diego, State of California.

[Exhibit "A" (Mortgage) same as Exhibit "A" to answer of the Bank to the Bill of Interpleader heretofore printed.]

EXHIBIT "B"

THE EAGLE, STAR AND BRITISH DOMINIONS
No. PC 57892

By this Policy Insures M. G. TADLOCK
On account of HIMSELF

In case of loss, to be paid in funds current in the United
States to

ASSURED AND SECURITY TRUST & SAVINGS
BANK OF SAN DIEGO, CALIFORNIA,
as their respective interests may appear.

Does make Insurance and cause SEVEN THOUSAND
DOLLARS.

To be insured at and from OCTOBER 8, 1935, to OCTO-
BER 8, 1936, beginning and ending with NOON,
PACIFIC STANDARD TIME.

Subject to the terms and conditions of the attached
endorsement.

It is understood and agreed that the following Clause
supersedes Clause No. 4 of the policy form to which this
endorsement is attached:

"Warranted that this Company shall not be liable for
loss or damage to Fish, Fishing Tackle, Nets or Dories
or any kind of extra fishing equipment whether included
as General Average or otherwise; but nevertheless, in the
event of any towage or salvage, or any General Average
not based upon sacrifice of or loss or damage to such in-
terests, this company will pay (in proportion that the
amount of insurance hereunder bears to the insured hull
value) all towage or salvage expenses and all General
Average contributions legally due from such interests."

CALIFORNIA FISHING VESSEL FORM (1934)

Attached to Policy No. PC 57892 of EAGLE, STAR AND BRITISH DOMINIONS INS. CO., LTD. per DIESEL VESSEL "YELLOWTAIL"

"It is warranted by the assured that the vessel hereby insured shall be employed only in the fishing industry; provided, however, that said vessel may be otherwise lawfully engaged for a period not to exceed ten consecutive days and warranted by the assured that the employment of the insured vessel shall at all times be confined to the Pacific Ocean not North of Point Arena, nor South of 18 degrees North Latitude and in the Gulf of California not North of 30 degrees North Latitude.

Loss if any, payable, as their respective interests may appear to:

NAME	ADDRESS
M. G. TADLOCK,	SAN DIEGO, CALIFORNIA.
SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, CALI- FORNIA	SAN DIEGO, CALIFORNIA.

1 Subject to the foregoing warranty of employment and warranty of trading limits, this Policy is agreed to cover the vessel hereby insured as employment may offer, in Port and at Sea, in Docks and Graving Docks, and on Ways, Gridirons, and Pontoons at all times, in all places and on all occasions, services, and trades whatsoever and wheresoever, under steam or sail; with leave to sail with or without Pilots, to tow and to be towed, and to assist Vessels and/or craft in all situa-

tions, and to any extent, to render salvage services, and to go on trial trips. With liberty to discharge, exchange, and to take on board Goods, Specie, Passengers and Stores, wherever the vessel may call at or proceed to, without being deemed a deviation, and with liberty to carry Goods, Live Cattle, etc., on deck or otherwise, but warranted free from any claims in respect of jettison of Cattle or Goods carried on deck. With leave to dock, undock, and change docks as often as may be required, and to go on slipway, gridiron and/or pontoon and/or to adjust compasses.

- 2 And it is expressly declared and agreed that no acts of the Insurer or Assured, in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment.
- 3 Warranted free from Particular Average under 3%, but nevertheless, when the vessel shall have been stranded, sunk, on fire or in collision with another ship or vessel underwriters shall pay the damage to the insured vessel occasioned thereby.
- 4 Warranted that this company shall not be liable for loss or damage to fish, fishing tackle, nets or dories or any kind of extra fishing equipment, whether included as General Average or otherwise.
- 5 "Warranted free of all claims for wages and provisions of, or allowances to, crew whether allowed as General Average, sue and labor expenses or otherwise."
- 6 Notwithstanding anything to the contrary contained in the contract of affreightment, general average and salvage shall be adjusted so far as concerns the liability of these insurers under this Policy according to the law

and practice obtaining at the place where the adventure ends, except only that if the contract of affreightment provides for adjustment according to the York-Antwerp Rules, 1890, then rules 1 to 17, both inclusive, shall control as to all matters referred to therein, and subject to any express provision in this policy where the Assured is liable for and has paid any general average contribution and the contributory value is greater than the insured value, the amount recoverable under this Policy shall be only in the proportion that the amount insured hereunder bears to the contributory value and where the contributory value has been reduced by a particular average for which these Assurers are liable, the amount of particular average claim under this Policy shall be deducted from the amount insured under this Policy in order to ascertain what share of the contribution is recoverable from these Assurers; the extent of the liability of these Assurers for salvage shall be computed on the same principle.

- 7 Average payable without deduction of thirds, new for old, whether the average be particular or general.
- 8 From the cost of cleaning and painting the bottom of a vessel, (exclusive of dry-dock charges) recoverable in average, there shall be deducted one-twelfth for every month since the Vessel was last painted, but no allowance shall be made for cleaning and painting on account of exposure to air unless the Vessel has been more than twenty-four hours on the dock.
- 9 The risks covered by this policy are to include loss or damage to the insured vessel resulting from explosion howsoever or wheresoever occurring but it is especially understood and agreed that the above word-

ing is not intended to cover explosion caused by any peril specially excluded by this policy or forms attached thereto.

- 10 Warranted free from loss of or damage to guards, stanchions and/or bulwarks, caused by bumping, rubbing or chafing while loading or unloading at sea, or while moored in Harbors or other mooring grounds or docks.
- 11 In the event of expenditure for Salvage charges, or under the Sue and Labour Clause, this Policy shall only be liable for its share of such proportion of the amount chargeable to the property hereby insured as the insured value, less loss and/or damage, if any, for which the Insurer is liable, bears to the value of the salvaged property.

Provided that where there are no proceeds or there are expenses in excess of the proceeds, the expenses, or the excess of the expenses, as the case may be, shall be apportioned upon the basis of the sound value of the property at the time of the accident, and this Policy without any deduction for loss and/or damage shall bear its pro rata of such expenses or excess of expenses accordingly.

- 12 It is also agreed that this vessel be warranted by the assured free of capture, seizure, arrest, restraint, detainment, pre-emption, or detention or the consequence thereof or any attempt thereat (piracy excepted) or the direct or remote consequences of any hostilities, arising from the acts of any government, peoples or persons whatsoever whether on account of any illicit or prohibited trade, or any trade in articles contraband of war, or the violation of any port regulation or other-

wise. Also free from loss or damage resulting from measures or operations incident to war whether before or after the declaration thereof. Also warranted free of loss or damage caused by strikers, locked out workmen or persons taking part in labor disturbances or riots or civil commotions or persons committing malicious mischief or sabotage.

- 13 Warranted by the Assured that said vessel shall at all times during the continuance of this policy be tight and staunch.

Warranted by the Assured that said vessel shall at all times during the continuance of this policy be well found in anchors, cable, rigging, tackle and apparel, as is usual and customary; also, in all other things and means necessary and proper for safe navigation, according to the usage and custom.

- 14 This Policy to be null and void should the Vessel during the currency of this Policy be engaged, with or without the knowledge or consent of the Assured hereunder, in any violation of an enactment of Congress, December 17th, 1914, as amended February 24th, 1919, known and designated as the Harrison Anti-Narcotic Act, together with subsequent and future amendments thereto, or any other illicit or prohibited trade.

It is agreed that this insurance shall be void in case 15 this Policy or the interest insured thereby shall be sold, assigned, transferred or pledged without the previous consent in writing of this Company.

Either party may cancel this policy by giving five 16
(5) days notice in writing, by registered letter or a
telegram which requires delivery to be notified to the
sender. The dispatch of such letter or telegram by the
Company addressed to the last known address of the
assured shall constitute complete and sufficient notice
and such cancellation shall be effective at midnight,
Pacific Standard Time, on the fifth day after the dis-
patch of the same. Said cancellation shall be without
prejudice to claims for premiums earned and due for
the period while the policy is in force. If cancelled at
request of Underwriters pro rata daily returns to be
made. If cancelled at request of Assured to return .70
per cent net for every thirty days of unexpired time
but no returns whatsoever to be paid in case of loss of
the vessel.

Should the vessel at the expiration of this policy be 17
at sea, or in distress, or at a port of refuge or call,
she shall, provided previous notice be given to the
Underwriters and further provided cancellation notice
has not been served in accordance with the terms of
Clause No. 16, be held covered at a pro rata monthly
premium, to her port of destination, and whilst there
for not exceeding forty-eight hours.

In ascertaining whether the Vessel is a constructive 18
total loss the insured value shall be taken as the re-
paired value, and nothing in respect of the damaged
or break-up value of the vessel or wreck shall be taken
into account.

In event of total or constructive total loss, no claim 19
to be made by the Underwriters for freight, whether
notice of abandonment has been given or not.

In no case shall Underwriters be liable for unre- 20
paired damage in addition to a subsequent total loss
sustained during the term covered by this Policy.

And it is further agreed that if the Ship hereby in- 21
sured shall come into collision with any other Ship or
Vessel, and the Assured or Charterers shall in conse-
quence thereof become liable to pay and shall pay by
way of damages to any other person or persons any
sum or sums in respect of such collision, this Company
will pay the Assured or Charterers such proportion of
such sum or sums so paid as its subscription hereto
bears to the value of the Ship hereby insured, provided
always that its liability in respect of any one such
collision shall not exceed its proportionate part of the
value of the Ship hereby insured; and in cases in which
the liability of the Ship has been contested, or proceed-
ings have been taken to limit liability, with the consent
in writing of a majority of the underwriters on the hull
and machinery (in amount), this Company will also
pay a like proportion of the costs which the Assured
or Charterers shall thereby incur, or be compelled to
pay; but when both Vessels are to blame, then unless
the liability of the Owners or Charterers of one or
both of such Vessels becomes limited by law, claims
under this clause shall be settled on the principle of
cross-liabilities as if the Owners or Charterers of each
Vessel had been compelled to pay to the Owners or
Charterers of the other of such Vessels such one-half
or other proportion of the latter's damages as may have
been properly allowed in ascertaining the balance or
sum payable by or to the Assured or Charterers in con-
sequence of such collision.

Provided always that this clause shall in no case extend to any sum which the Assured or Charterers may become liable to pay or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages, and similar structures, consequent on such collision; or in respect to the cargo or engagements of the insured vessel, or for loss of life or personal injury.

Provided further that the Assurers shall not be liable for demurrage or loss of profits claimed by any person, firm or corporation engaged directly or indirectly in the fishing industry.

Should the Vessel hereby insured come into collision 22 with or receive salvage services from another Vessel belonging wholly or in part to the same Owners or Charterers, or under the same management, the Assured or Charters shall have the same rights under this policy as they would have were the other Vessel entirely the property of owners not interested in the Vessel hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered, shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the Assured or Charterers.

Provided that in the event of any claim being made 23 by Charters under the above clauses, they shall not be entitled to recover in respect to any liability to which the Owners of the Ship, if interested in this Policy at the time of the collision in question, would not be subject, nor to a greater extent than the Shipowners would be entitled in such event to recover.

Warranted that no insurance shall be placed for ac- 24
count of Assured and/or their managers on premiums,
freight, hire, profit, disbursements, commissions or
other interests, policy proof of interest or full interest
admitted or on excess or increased value of hull or
machinery, however described.

In the event of accident whereby loss or damage may 25
result in a claim under this policy, notice shall be given
to the Assurers, where practicable prior to survey, so
that they may appoint their own surveyor if they so de-
sire. The Assurers shall be entitled to decide the port
to which a damaged vessel shall proceed for docking
or repairing (the actual additional expense of the voy-
age arising from the compliance with Assurers require-
ments being refunded to the Owners) and the Assurers
shall also have a right of veto in connection with the
place of repair or repairing firm proposed and, when-
ever the extent of the damage is ascertainable the ma-
jority (in amount) of the Assurers may take or may
require the Assured to take tenders for the repair of
such damage. In cases where a tender is accepted by
or with the approval of the Assurers, the Assurers will
make an allowance at the rate of 30 per cent. per an-
num on the insured value for the time actually lost in
waiting for tenders. In the event of the Assured fail-
ing to comply with the conditions of this clause 15 per
cent. shall be deducted from the amount of the ascer-
tained claim.

Notwithstanding the foregoing:

(a) It is mutually understood and agreed that this company shall not be bound by any salvage agreement entered into by the Assured and/or his servants, but salvage claims are to be adjusted on their merits.

(b) Warranted free from liability in general average for deck cargo jettisoned.

(c) Warranted free of claim for towers liability.

(d) In the event of Particular Average and/or General Average sacrifices of the property hereby insured the assurers only to be liable (subject, however, to the free of average warranty) for the excess of \$70.00 in respect of each accident.

(e) Warranted to be subject to English law and usage as to liability for and settlement of any and all claims.

It is agreed that these clauses shall be considered to supersede and annul any clauses to the same or similar effect printed in or attached to this policy, and that for the purposes of construction these clauses shall be deemed of the nature of written additions thereto.

3M-7-34

Printed in U.S.A.

As employment may offer, upon the Body, Tackle, Apparel, Ordnance, Munitions, Artillery, Boat and other Furniture of and in the good DIESEL VESSEL called the "YELLOWTAIL" or by whatsoever other name or names the said ship is or shall be named or called, beginning the adventure upon the said ship, &c., as above, and shall so continue and endure during the period as aforesaid. And it shall be lawful for the said ship, &c., to

proceed and sail to and touch and stay at any Ports or Places whatsoever and wheresoever without prejudice to this Insurance. The said ship, &c., for so much as concerns the Assured, by agreement between the Assured and Assurers in this Policy, are and shall be valued at as follows:

Hull, Tackle, Apparel and Furniture	\$ - - -	
Machinery and Boilers and every-thing connected therewith . .	\$ - - -	
		\$7,000.00
- - - - - SEVEN THOUSAND - - - - DOLLARS		

[In margin]: In event of non-payment of premium sixty days after attachment this policy may be cancelled by the Assurers upon five days' written notice being given the assured.

TOUCHING the Adventures and Perils which we, the said Insurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said ship, &c., or any part thereof; and in case of any Loss or Misfortune it shall be lawful to the Insured, their Factors, Servants and Assigns, to sue, labor and travel for, in, and about the Defense, Safeguard and Recovery of the said ship, &c., or any part thereof,

without prejudice to this Insurance; to the charges whereof of the said Insurance Company will contribute according to the Rate and Quantity of the sum herein insured. And it is specially declared and agreed that no acts of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment; having been paid the consideration for this Insurance by the Insured, or his or their Assigns, at and after the rate of 10.50 per cent.

[In margin]: Sum Insured \$7,000.00—Rate Per Cent 10.50 Premium \$735.00

Subject to the printed clauses and warranties as attached.

If there be an Agent of the INSURERS located at or near any place where repairs are made, or proofs of loss or average taken, said Agent must be represented on the surveys, if any be held, and all bills for repairs, or proofs of loss or average, must be certified to by him, or they will not be allowed by this Company.

In Witness Whereof, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agents of the Company at San Francisco, Calif.

Countersigned at SAN FRANCISCO, CALIFORNIA, this 17th day of OCTOBER A. D. 1935

Talbot Bird & Co Inc

United States Marine Managers

 Manager

EXHIBIT "C"

THE EAGLE, STAR AND BRITISH DOMINIONS

[Monogram]

INSURANCE COMPANY, LIMITED
of London, EnglandTALBOT, BIRD & CO., Inc., United States Marine
Managers

No. PC59564

By this Policy Insures M. G. TADLOCK
On account of HIMSELFIn case of loss, to be paid in funds current in the United
States toASSURED AND/OR SECURITY TRUST & SAV-
INGS BANK OF SAN DIEGO and/or GARBUTT
& WALSH, (A PARTNERSHIP) as their respec-
tive interests may appear, or order.Does make Insurance and cause EIGHT THOUSAND
DOLLARS.To be insured at and from FEBRUARY 5, 1936, to
FEBRUARY 5, 1937, beginning and ending with
NOON, PACIFIC STANDARD TIME.Subject to the terms and conditions of the attached en-
dorsement.

CALIFORNIA FISHING VESSEL FORM (1936)

Attached to Policy No. PC 59564 per DIESEL VES-
SEL "YELLOWTAIL"

“It is warranted by the assured that the vessel hereby insured shall be employed only in the fishing industry; provided, however, that said vessel may be otherwise lawfully engaged for a period not to exceed ten consecutive days and warranted by the assured that the employment of the insured vessel shall at all times be confined to the Pacific Ocean not North of Point Arena, nor South of 18 degrees North Latitude and in the Gulf of California, not North of 30 degrees North Latitude.

Loss, if any, payable, as their respective interests may appear to:

NAME	ADDRESS
M. G. TADLOCK	SAN DIEGO, CALIFORNIA.
SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, CALI- FORNIA	” ”
GARBUTT & WALSH	TERMINAL ISLAND, SAN PEDRO, CALIF.

1 Subject to the foregoing warranty of employment and warranty of trading limits, this Policy is agreed to cover the vessel hereby insured as employment may offer, in Port and at Sea, in Docks and Graving Docks, and on Ways, Gridirons, and Pontoons at all times, in all places and on all occasions, services, and trades whatsoever and wheresoever; with leave to sail with or without Pilots, to tow and to be towed, and to assist Vessels and/or craft in all situations, and to any extent, to render salvage services, and to go on trial trips. With liberty to discharge, exchange, and to take on

board Goods, Specie, Passengers and Stores, wherever the vessel may call at or proceed to, without being deemed a deviation, and with liberty to carry Goods, Live Cattle, etc., on deck or otherwise, but warranted free from any claims in respect to jettison of Cattle or Goods carried on deck. With leave to dock, undock, and change docks as often as may be required, and to go on slipway, gridiron and/or pontoon and/or to adjust compasses.

- 2 And it is expressly declared and agreed that no acts of the Insurer or Assured, in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment.
- 3 Warranted free from Particular Average under 3%, but nevertheless, when the vessel shall have been stranded, sunk, on fire, or in collision with another ship or vessel, underwriters shall pay the damage occasioned thereby.
- 4 "Warranted that this Company shall not be liable for loss or damage to Fish, Bait, Fishing Tackle, Nets or Dories or any kind of extra fishing equipment whether included as General Average or otherwise; but nevertheless, in the event of any towage or salvage, or any General Average not based upon sacrifice of or loss or damage to such interests, this company will pay (in proportion that the amount of insurance hereunder bears to the insured hull value) all towage or salvage expenses and all General Average contributions legally due from such interests."

Notwithstanding the provisions of this clause, however, it is understood and agreed if power boat is regularly carried by the vessel insured hereunder same

shall be covered at all times subject to policy conditions, except that in event of loss applying to the power boat alone, the deductible average shall be \$50.00.

- 5 "Warranted free of all claims for wages and provisions of, or allowances to, crew whether allowed as General Average, sue and labor expenses or otherwise."
- 6 Notwithstanding anything to the contrary contained in the contract of affreightment, general average and salvage shall be adjusted so far as concerns the liability of these insurers under this Policy according to the law and practice obtaining at the place where the adventure ends, except only that if the contract of affreightment provides for adjustment according to the York-Antwerp Rules, 1890, then rules 1 to 17, both inclusive, shall control as to all matters referred to therein, and subject to any express provisions in this policy where the Assured is liable for and has paid any general average contribution and the contributory value is greater than the insured value, the amount recoverable under this Policy shall be only in the proportion that the amount insured hereunder bears to the contributory value and where the contributory value has been reduced by a particular average for which these Assurers are liable, the amount of particular average claim under this Policy shall be deducted from the amount insured under this Policy in order to ascertain what share of the contribution is recoverable from these Assurers; the extent of the liability of these Assurers for salvage shall be computed on the same principle.

- 7 Average payable without deduction of thirds, new for old, whether the average be particular or general.
- 8 From the cost of cleaning and painting the bottom of a vessel, (exclusive of marine way charges) recoverable in average, there shall be deducted one-twelfth for every month since the Vessel was last painted, but no allowance shall be made for cleaning and painting on account of exposure to air unless the Vessel has been more than twenty-four hours on the dock.
- 9 The risks covered by this policy are to include (subject to free of average and deductible average warranties) loss or damage to the insured vessel resulting from explosion howsoever or wheresoever occurring, but it is especially understood and agreed that the above wording is not intended to cover explosion caused by any peril specially excluded by this policy or forms attached thereto.
- 10 Warranted free from loss of or damage to guards, stanchions and/or bulwarks, caused by bumping, rubbing or chafing, while loading or unloading at sea, or while moored in Harbors or other mooring grounds or docks.
- 11 In the event of expenditure for Salvage, Salvage charges, or under the Sue and Labour Clause, this Policy shall only be liable for its share of such proportion of the amount chargeable to the property hereby insured as the insured value, less loss and/or damage, if any, for which the Insurer is liable, bears to the value of the salvaged property.

Provided that where there are no proceeds or there are expenses in excess of the proceeds, the expenses, or the excess of the expenses, as the case may be, shall be apportioned upon the basis of the sound value of the property at the time of the accident, and this Policy without any deduction for loss and/or damage shall bear its pro rata of such expenses or excess of expenses accordingly.

- 12 It is also agreed that this vessel be warranted by the assured free of capture, seizure, arrest, restraint, detainment, pre-emption, or detention or the consequence thereof or any attempt thereafter (piracy excepted or the direct or remote consequences of any hostilities, arising from the acts of any government, peoples or persons whatsoever whether on account of any illicit or prohibited trade, or any trade in articles contraband of war, or the violation of any port regulation or otherwise. Also free from loss or damage resulting from measures or operations incident to war, whether before or after the declaration thereof. Also warranted free of loss or damage caused by strikers, locked out workmen or persons taking part in labor disturbances or riots or civil commotions or persons committing malicious mischief or sabotage.
- 13 Warranted by the Assured that said vessel shall at all times during the continuance of this policy be tight and staunch.

Warranted by the Assured that said vessel shall at all times during the continuance of this policy be well found in anchors, cable, rigging, tackle and apparel, as is usual and customary; also, in all other things and means necessary and proper for safe navigation, according to the usage and custom.

This Policy to be null and void should the Vessel 14 during the currency of this Policy be engaged, with or without the knowledge or consent of the Assured hereunder, in any violation of an enactment of Congress, December 17th, 1914, as amended February 24th, 1919, known and designated as the Harrison Anti-Narcotic Act, together with subsequent and future amendments thereto, or any other illicit or prohibited trade.

It is agreed that this insurance shall be void in case 15 this Policy or the majority interest insured thereby shall be sold, assigned, transferred or pledged without the previous consent in writing of this Company.

Either party may cancel this policy by giving ten 16 (10) days notice in writing by registered mail or a telegram which requires delivery to be notified to the sender. The dispatch of such letter or telegram by the Company addressed to the last known address of the assured shall constitute complete and sufficient notice and such cancellation shall be effective at midnight, Pacific Standard Time, on the tenth day after dispatch of the same. Said cancellation shall be without prejudice to claims for premiums earned and due for the period while the policy is in force. If cancelled at request of Underwriters pro rata daily returns to be made. If cancelled at request of Assured to return .70 per cent net for every thirty days of unexpired time but no returns whatsoever to be paid in case of loss of the vessel.

Should the vessel at the expiration of this policy be 17 at sea, or in distress, or at a port of refuge or call, she shall, provided previous notice be given to the Un-

derwriters and further provided cancellation notice has not been served in accordance with the terms of Clause No. 16, be held covered at a pro rata monthly premium, to her port of destination, and whilst there for not exceeding forty-eight hours.

In ascertaining whether the Vessel is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account. 18

In event of total or constructive total loss, no claim to be made by the Underwriters for freight, whether notice of abandonment has been given or not. 19

In no case shall Underwriters be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this Policy. 20

And it is further agreed that if the Ship hereby insured shall come into collision with any other Ship or Vessel, and the Assured or Charterers shall in consequence thereof become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, this Company will pay the Assured or Charterers such proportion of such sum or sums so paid as its subscription hereto bears to the value of the Ship hereby insured, provided always that its liability in respect of any one such collision shall not exceed its proportionate part of the value of the Ship hereby insured; and in cases in which the liability of the Ship has been contested, or proceedings have been taken to limit liability, with the consent in writing of a majority of the underwriters on the hull and machinery (in amount), this Company will also 21

pay a like proportion of the costs which the Assured or Charterers shall thereby incur, or be compelled to pay; but when both Vessels are to blame, then unless the liability of the Owners or Charterers of one or both of such Vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the Owners or Charterers of each vessel had been compelled to pay to the Owners or Charterers of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision.

Provided always that this clause shall in no case extend to any sum which the Assured or Charterers may become liable to pay or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages, and similar structures, consequent on such collision; or in respect to the cargo or engagements of the insured vessel, or for loss of life or personal injury.

Provided further that the Assurers shall not be liable for demurrage or loss of profits claimed by any person, firm or corporation engaged directly or indirectly in the fishing industry.

Should the Vessel hereby insured come into collision 22 with or receive salvage services from another Vessel belonging wholly or in part to the same Owners or Charterers, or under the same management, the Assured or Charterers shall have the same rights under

this policy as they would have were the other Vessel entirely the property of owners not interested in the Vessel hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered, shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the Assured or Charterers.

Provided that in the event of any claim being made 23
by Charterers under the above clauses, they shall not be entitled to recover in respect of any liability to which the Owners of the Ship, if interested in this Policy at the time of the collision in question, would not be subject, nor to a greater extent than the Shipowners would be entitled in such event to recover.

Warranted that no insurance shall be placed for ac- 24
count of Assured and/or their managers on premiums, freight, hire, profit, disbursements, commissions or other interests, policy proof of interest or full interest admitted or on excess or increased value of hull or machinery, however described.

In the event of accident whereby loss or damage may 25
result in a claim under this policy, notice shall be given to the Assurers, where practicable, prior to survey, so that they may appoint their own surveyor if they so desire. The Assurers shall be entitled to decide the port to which a damaged vessel shall proceed for docking or repairing (the actual additional expense of the voyage arising from the compliance with Assurers require-

ments being refunded to the Owners) and the Assurers shall also have a right of veto in connection with the place of repair or repairing firm proposed and, whenever the extent of the damage is ascertainable the majority (in amount) of the Assurers may take or may require the Assured to take tenders for the repair of such damage. In cases where a tender is accepted by or with the approval of the Assurers, the Assurers will make an allowance at the rate of 30 per cent. per annum on the insured value for the time actually lost in waiting for tenders. In the event of the Assured failing to comply with the conditions of this clause 15 per cent. shall be deducted from the amount of the ascertained claim.

Notwithstanding the foregoing:

(a) It is mutually understood and agreed that this company shall not be bound by any salvage agreement entered into by the Assured and/or his servants, but salvage claims are to be adjusted on their merits.

(b) Warranted free from liability in general average for deck cargo jettisoned.

(c) Warranted free of claim for towers liability.

(d) In the event of Particular Average and/or General Average sacrifices of the property hereby insured the assurers only to be liable (subject, however, to the free of average warranty) for the excess of \$80.00 in respect of each accident.

(e) Warranted to be subject to English law and usage as to liability for and settlement of any and all claims.

It is agreed that these clauses shall be considered to supersede and annul any clauses to the same or similar effect printed in or attached to this policy, and that for the purposes of construction these clauses shall be deemed of the nature of written additions thereto.

As employment may offer, upon the Body, Tackle, Apparel, Ordnance, Munitions, Artillery, Boat and other Furniture of and in the good DIESEL VESSEL called the "YELLOWTAIL" or by whatsoever other name or names the said ship is or shall be named or called, beginning the adventure upon the said ship, &c., as above, and shall so continue and endure during the period as aforesaid. And it shall be lawful for the said ship, &c., to proceed and sail to and touch and stay at any Ports or Places whatsoever and wheresoever without prejudice to this Insurance. The said ship, &c., for so much as concerns the Assured, by agreement between the Assured and Assurers in this Policy, are and shall be valued at as follows:

Hull, Tackle, Apparel and Furniture	\$ - - -	
Machinery and Boilers and everything connected therewith . .	\$ - - -	
		\$8,000.00
- - - - - EIGHT THOUSAND - - - - - DOLLARS		

[In margin]: In event of non-payment of premium sixty days after attachment this policy may be cancelled by the Assurers upon five days' written notice being given the assured.

TOUCHING the Adventures and Perils which we, the said Insurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said ship, &c., or any part thereof; and in case of any Loss or Misfortune it shall be lawful to the Insured, their Factors, Servants and Assigns, to sue, labor and travel for, in, and about the Defense, Safeguard and Recovery of the said ship, &c., or any part thereof, without prejudice to this Insurance; to the charges whereof the said Insurance Company will contribute according to the Rate and Quantity of the sum herein insured. And it is specially declared and agreed that no acts of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment; having been paid the consideration for this Insurance by the Insured, or his or their Assigns, at and after the rate of 10.50 per cent.

[In margin]: Sum Insured \$8,000.- Rate Per Cent
10.50 Premium \$840.00

Subject to the printed clauses and warranties as attached.

If there be an Agent of the INSURERS located at or near any place where repairs are made, or proofs of loss or average taken, said Agent must be represented on the surveys, if any be held, and all bills for repairs, or proofs of loss or average, must be certified to by him, or they will not be allowed by this Company.

In Witness Whereof, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agents of the Company at San Francisco, Calif.

Countersigned at SAN FRANCISCO, CALIFORNIA, this 13th day of FEBRUARY A. D. 1936

Talbot Bird & Co Inc
United States Marine Managers
L Lawes

Manager

Printed in U.S.A.

[Endorsed]: Filed Jun. 16, 1936

[TITLE OF COURT AND CAUSE.]

ANSWER TO CROSS-BILL OF RESPONDENTS
MATT J. WALSH AND FRANK E. GARBUTT,
doing business under the firm name and style of
GARBUTT-WALSH.

TO THE HONORABLE, THE JUDGES OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF CALI-
FORNIA, CENTRAL DIVISION:

The Answer of M. G. TADLOCK, Cross-Respondent
above named, to the Cross-Bill of Respondents MATT J.
WALSH and FRANK E. GARBUTT, doing business
under the firm name and style of GARBUTT-WALSH,
respectfully admits, denies and alleges as follows:

I.

This Cross-Respondent admits the truth of the allega-
tions set forth in Paragraph I of said Cross-Bill, that
the Cross-Complainants Matt J. Walsh and Frank E.
Garbutt are now and were at all times mentioned in said
Cross-Bill co-partners doing business under the firm
name and style of Garbutt-Walsh, with their principal
place of business in the City of Los Angeles, County,
State and District aforesaid.

II.

This Cross-Respondent admits the truth of the allega-
tions contained in Paragraph II of said Cross-Bill, that
this cross-respondent was during all of the times men-
tioned in said Cross-Bill, the owner of a domestic vessel
known as the Diesel Vessel "Yellowtail", and is now and
was at the time of the filing of said Complaint in Inter-

pleader, a citizen and resident of the State of California, District aforesaid.

III.

This Cross-Respondent admits the truth of the allegations set forth in Paragraph III of said Cross-Bill, to the effect that Cross-Respondent Security Trust & Savings Bank of San Diego was, during the times mentioned in said Cross-Bill, a banking corporation of the State of California, with its principal place of business in the City of San Diego, in said State, and that said cross-respondent bank was during all of said times, the owner and holder of a certain mortgage upon said Diesel Vessel "Yellowtail", which was in writing and made by this cross-respondent as Mortgagor, in favor of cross-respondent bank; that said mortgage was dated October 22, 1934 and received for record in the office of the Collector of Customs, District of San Diego, on November 3, 1934, and recorded in Liber 1349-2 of Mortgages, Folio 19.

IV.

This cross-respondent admits the truth of the allegations set forth in Paragraph IV of said Cross-Bill, that cross-respondent Harbor Boat Building Company was during all of the times mentioned in said Cross-Bill a California corporation, with its principal place of business in the City of Los Angeles, County, State and District aforesaid.

V.

This Cross-Respondent admits the truth of the allegations set forth in Paragraph V of said Cross-Bill to the effect that David C. Campbell and George E. Campbell during the times mentioned in said cross-bill, were co-

partners doing business under the firm name and style of The Campbell Machine Co., with their principal place of business in the County of San Diego, State of California.

VI.

This cross-respondent admits the truth of the allegations set forth in Paragraph VI of said Cross-Bill, that the Complainant in Interpleader herein has heretofore deposited in the registry of this Court the proceeds of said marine insurance policy No. PC-59564, in the sum of \$7160.00, covering the said Diesel Vessel "Yellowtail", and that this Court, on the 11th day of May, 1936, made and entered its interlocutory decree that the defendants appearing herein and against whom no order of default has been entered, appear or plead on or before twenty days from the date of such decree; that the complainant be awarded its costs and solicitors' fees, in the sums named in said Cross-Bill, to be paid out and deducted from said sum of \$7160.00, and that the remainder or balance of said sum be retained by the Clerk of said Court, to be distributed to the defendants as their interest might appear, and be established by final decree in said cause, and any balance thereof be distributed to the complainant.

VII.

This Cross-Respondent, in answer to Paragraph VII of said Cross-Bill, admits certain allegations set forth in said Paragraph, namely: that between the 23rd day of December, 1935 and the 31st day of January, 1936, the said cross-complainants did furnish and supply to the said Diesel Vessel "Yellowtail" at the port of Los Angeles, certain materials, supplies and equipment, and did perform certain work and labor at the special instance and request

of the master of said Diesel Vessel "Yellowtail", but denies that said material, supplies and equipment and/or said labor and/or work, was furnished and/or supplies with the knowledge and/or consent of the cross-respondent Security Trust & Savings Bank of San Diego; and further denies that said materials, supplies and equipment and said work and labor so furnished and/or performed were of the agreed value of \$4858.06, and alleges the fact to be that said materials, supplies and equipment, work and labor were of the agreed value of \$1000.00.

This cross-respondent, M. G. Tadlock, further answering said Paragraph VII, admits that the materials, supplies and equipment so furnished and supplied as in this answer alleged, and the work and labor so performed, as herein set forth, were necessary and proper supplies for said Diesel Vessel "Yellowtail", and were furnished on the credit of said vessel "Yellowtail", and did go into said vessel and become a part thereof; but denies that said cross-complainants did thereby obtain and/or acquire and denies that said cross-complainants ever since have had a lien upon said Diesel Vessel "Yellowtail", or upon her engines or her tackle, or apparel or furniture or her equipment for the sum of \$4858.06, or for any other sum; and further denies that the time of the commencement of the risk set forth in said Cross-Bill and/or thereafter until the loss described, that said cross-complainants had an insurable interest in said Diesel Vessel "Yellowtail" in the said sum of \$4358.06, or in any other sum in excess of \$1000.00.

Further answering said Paragraph VII of said Cross-Bill, this cross-respondent alleges that during all of the times mentioned in said Cross-Bill, the said master of said

Diesel Vessel "Yellowtail" and the said owner thereof were and each of them was without authority to purchase said materials, supplies and equipment and/or to purchase said work and/or labor for the said Diesel Vessel "Yellowtail", the furnishing and performance of which said materials, supplies and equipment and said work and labor would entitle said cross-complainants to obtain and acquire a maritime lien upon said Diesel Vessel "Yellowtail" which would in law be prior to the mortgage herein in this Answer described.

VIII.

This Cross-Respondent, answering Paragraph VIII of said Cross-Bill, admits the allegations set forth therein that complainant, The Eagle, Star and British Dominions, made, executed and delivered its certain policy of marine insurance No. PC 59564 on said Diesel Vessel "Yellowtail", and that said insurance policy was made payable to the assured, this cross-respondent, and/or cross-respondent bank and/or cross-complainants, as their respective interests may appear, and that said insurance policy was made out in the sum of \$8000.00, payable in the event that said vessel became a total loss; and further admits that said insurance was for the term commencing February 5, 1936 and ending February 5, 1937, and that said policy covered the body, tackle, apparel, ordnance, munitions, artillery, boat and other furniture of said Diesel Vessel "Yellowtail" and that a photostatic copy of said policy is attached to the Complaint in Interpleader.

IX.

This Cross-Respondent admits that on or about the 22nd day of February, 1936, as the result of a gasoline ex-

plosion, the said Diesel Vessel "Yellowtail" caught fire, burned and sank at sea, and became a total loss, owing to perils insured against in said policy, but denies that thereupon there became payable according to the terms of said policy, or otherwise, to said cross-complainants the sum of \$4358.06, or any other sum which, with interest or without interest, or with costs or without costs, or with attorneys' fees or without attorneys' fees, is due and/or owing to these cross-complainants from said sum of \$7160.00 heretofore deposited in the registry of the above entitled court.

X.

This Cross-Respondent admits that he claims some right, title and interest in and to the proceeds of said insurance, to-wit, the sum of \$7160.00, and denies that his claim is subsequent, subordinate and/or inferior to that of the cross-complainants, and alleges that by reason of the mortgage and insurance policies described in this cross-respondent's Answer to the Complaint in Interpleader on file herein, said cross respondent, M. G. Tadlock, is entitled to have said insurance moneys, towit: the said sum of \$7160.00, applied as payment upon the said mortgage hereinabove described, and to that extent his claim, title and interest is prior and superior to that of the cross-complainants, and to that extent this cross-respondent further alleges that the claim of said cross-respondent bank, Security Trust & Savings Bank of San Diego, is prior and superior to the claim of said cross-complainants.

Answering the SECOND, SEPARATE AND FURTHER cause of Complaint in said Cross-Bill, this cross-respondent M. G. Tadlock admits, denies and alleges as follows:

I.

As an Answer to Paragraph I of said second, separate and further cause of complaint, this cross-respondent refers to all the matters and things set forth in Paragraphs I to X, inclusive, of his Answer hereinabove set forth, and respectfully asks this Honorable Court to consider said allegations as forming part of this Answer to the second, separate and further cause of complaint with the same effect and to all intents and purposes as though all of said matters and things were set forth in full herein.

II.

Answering Paragraph II of said second, separate and further cause of complaint, this cross-respondent admits that between the 23rd day of December, 1935, and the 31st day of January, 1936, said cross-complainants did furnish and supply to the Diesel Vessel "Yellowtail", at the Port of Los Angeles, certain materials, supplies and equipment, and did perform certain work and labor at the special instance and request of the master of said boat, but denies that said materials, supplies and equipment or said work and labor were furnished or performed at the special instance and/or request of the owner of said boat and/or with the knowledge and/or consent of the cross-respondent, Security Trust & Savings Bank of San Diego; and further denies that said materials, supplies and equipment so furnished and supplies and the work and labor so performed were reasonably worth the sum of \$4858.06, or any other sum in excess of \$1000.00;

And further answering said Paragraph, alleges that said materials, supplies and equipment and said work and labor were furnished and performed at the agreed price of \$1000.00.

This cross-respondent admits that said materials, supplies and equipment and said work and labor were necessary and proper for said vessel and were furnished on the credit of said vessel "Yellowtail" and did go into and become a part of said vessel, but denies that said cross-complainants did thereby obtain and/or acquire and/or ever since have had a lien upon said vessel, or her tackle, or apparel, or furniture and equipment, or her engines for the said sum of \$4858.06, or for any other sum, and denies that said cross-complainants had an insurable interest in said vessel in the sum of \$4358.06 or any other sum in excess of \$1000.00.

III.

This cross-respondent, in answer to Paragraph III of said second, separate and further cause of complaint, admits that on or about the 22nd day of February, 1936, as the result of a gasoline explosion, said Diesel Vessel "Yellowtail" caught fire, burned and sank at sea, and became a total loss, owing to perils insured against in said insurance policy, but denies that thereupon there became payable, according to the terms of said policy, or otherwise, to said cross-complainants the sum of \$4358.06, or any other sum which, with interest or without interest, or with costs or without costs, or with attorneys' fees or without attorneys' fees, is due and/or owing to cross-complainants from said sum of \$7160.00 heretofore deposited in the registry of the above entitled court.

IV.

This Cross-Respondent admits that he claims some right, title and interest in and to the proceeds of said insurance, to-wit: the said sum of \$7160.00, and that cross-respondent Security Trust & Savings Bank of San Diego claims some right, title and interest in and to said insurance money; and this cross-respondent, further answering said Paragraph IV, alleges that because of said mortgage and said policies of insurance described in this cross-respondent's Answer to the Complaint in Interpleader on file herein, this cross-respondent is entitled to have said insurance money applied as a payment upon said mortgage, and that by reason thereof, the said cross-respondent Security Trust & Savings Bank of San Diego and the said this cross-respondent have a right, title and interest in and to said money which is prior and superior to that of said cross-complainants; this cross-respondent denies, therefore, that the claim of said cross-respondent bank is without right, and that the claims of said cross-respondent bank and this cross-respondent are subsequent and/or subordinate and/or inferior to that of said cross-complainants.

WHEREFORE, having made answer to all the matters and things contained in the Cross-Bill of said Cross-Complainants, this Cross-Respondent PRAYS:

(1) That a decree be issued directing the payment of said sum of \$7160.00 to the Cross-Respondent, SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, and that said Cross-Respondent Bank be directed to apply said payment upon the Installment Note and Mortgage described in the Answer of this cross-respondent to the Complaint in Interpleader herein;

(2) That this Cross-Respondent recover his costs and attorneys' fees; and

(3) For such other and further relief as may be meet and proper in the premises.

Lindley & Higgins
 J. F. Du Paul

Attorneys for Cross-Respondent M. G. Tadlock

STATE OF CALIFORNIA)
) ss.
 County of San Diego)

M. G. TADLOCK, being first duly sworn, deposes and says:

That he is the answering Cross-Respondent herein; that he has read the foregoing ANSWER TO CROSS-BILL and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information or belief, and as to those matters that he believes it to be true;

M. G. Tadlock

Subscribed and sworn to before me, this 17 day of June, 1936.

[Seal] F. E. Lindley
 Notary Public in and for the County of San Diego,
 State of California

[Endorsed]: Filed Jun 18-1936.

[TITLE OF COURT AND CAUSE.]

MOTION TO SET ASIDE DEFAULT

Now come the Cross-Respondents SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, A Corporation, and M. G. TADLOCK, in the above entitled cause, and by and through their attorneys LINDLEY & HIGGINS and J. F. DuPAUL jointly and severally move this Honorable Court for an Order setting aside the default of these Cross-Respondents to the Cross-Bill of Cross-Complainants Garbutt-Walsh, heretofore entered on Friday, June 12, 1936, and for setting aside any Order of the Court made and entered in favor of said cross-complainants by reason of said default, and for such other and further relief from said default as may be meet and equitable to this Honorable Court.

This Motion is based upon the grounds that said default of said cross-respondents and each of them was caused by inadvertence and excusable neglect of counsel representing said cross-respondents and each of them, and upon the further ground that unless said default and any Order based thereon are and each of them is set aside, and the Verified Answers of said cross-respondents and each of them, heretofore filed with the Clerk of this Court on June 16, 1936 and June 18, 1936, respectively, be permitted to stand, equity and justice cannot be had between the parties to this action and cause, and these cross-respondents and each of them will suffer loss because

of inadvertence and excusable neglect on the part of counsel representing cross-respondents and each of them.

This Motion is based upon the affidavits of J. F. DuPAUL and SHELLEY J. HIGGINS, counsel for said cross-respondents and each of them, and upon the said verified answers to said Cross-Bill on file with the Clerk of this Court, and upon the pleadings, files and records of the above entitled cause on file in the office of the Clerk of this Court.

Said Cross-Respondents and each of them further move this Honorable Court for such other and further relief in the premises as may be just and meet.

Dated: June 20th, 1936.

Lindley & Higgins

J. F. Du Paul

Attorneys for Cross-Respondents Security Trust & Savings Bank of San Diego, a Corporation, and M. G. Tadlock.

[Endorsed]: Filed Jun. 22, 1936.

[TITLE OF COURT AND CAUSE.]

NOTICE OF MOTION TO SET ASIDE DEFAULT

TO: MATT J. WALSH and FRANK E. GARBUTT,
doing business under the firm name and style of
GARBUTT-WALSH, Cross-Complainants above
named, and to LLOYD S. NIX, Attorney for said
Cross-Complainants:

YOU AND EACH OF YOU will please take notice that on Monday, June 29, 1936, at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard, in the Court Room of the above entitled Court, in the Federal Building in the City of Los Angeles, California, counsel for cross-respondents SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Corporation, and M. G. TADLOCK will move the Court for an Order vacating and setting aside the default of said cross-respondents herein named, taken and entered by you on June 12, 1936, and any Order based upon such default made by the Court on said day, on the grounds and for the reason that the failure of the said cross-respondents to answer the Cross-Bill of cross-complainants herein within the time prescribed by rule of court was caused by inadvertence and excusable neglect on the part of attorneys representing said cross-respondents, and upon the further ground that equity and justice cannot be had unless said default is set aside and the verified answers of said cross-respondents be permitted to stand and the issues raised thereby be tried on the merits by said Honorable Court.

Said Motion will be based upon the Affidavits of J. F. DuPAUL and SHELLEY J. HIGGINS, attorneys representing said cross-respondents, and the pleadings, files and records of said case, together with the verified answers to said Cross-Bill of said Cross-complainants of said cross-respondents SECURITY TRUST & SAVINGS BANK OF SAN DIEGO and M. G. TADLOCK, heretofore filed with the Clerk of said Court, and copies of which have heretofore been served upon you.

Copies of the Affidavits herein mentioned are hereunto attached and made a part of this Notice.

Dated: June 20th, 1936.

Lindley & Higgins

J. F. Du Paul

Attorneys for Cross-Respondents Security Trust & Savings Bank of San Diego, A Corporation, and M. G. Tadlock.

[Endorsed]: Filed Jun. 22, 1936

[TITLE OF COURT AND CAUSE.]

AFFIDAVIT OF J. F. DuPAUL IN SUPPORT OF
MOTION TO SET ASIDE DEFAULT

STATE OF CALIFORNIA)
) ss.
County of San Diego)

J. F. DuPAUL, being first duly sworn, deposes and says:

That he is and has been during all of the times herein mentioned, an attorney and counselor at law, admitted to practice in all of the courts of the State of California, and in the District Court of the United States, for the Southern District of California; that during all of the times herein mentioned he has been and is associated with and employed by the firm of Lindley & Higgins, a co-partnership practicing law in the City of San Diego, County and State aforesaid;

That during all of the times herein mentioned, affiant has been and is employed to represent cross-respondents Security Trust & Savings Bank of San Diego and M. G. Tadlock in the above entitled action; that he is associated with the said firm of Lindley & Higgins in representing said cross-respondents in the above entitled Court;

That on the 29th day of May, 1936, affiant personally received through the United States mails, copy of Cross-Bill of Matt J. Walsh and Frank E. Garbutt, cross-complainants in the above entitled action; that immediately

upon receipt of said copy of said Cross-Bill, he delivered the same to Shelley J. Higgins, a member of the said firm of Lindley & Higgins, and consulted with the said Shelley J. Higgins as to the time within which said cross-respondents and each of them should, under the rules of practice of United States District Courts, answer said Cross-Bill;

That during all of the times herein mentioned the said Shelley J. Higgins has been in direct charge and supervision of the prosecution and defense on behalf of said cross-respondents herein named in the above entitled case and that, at the conclusion of said conference hereinabove referred to, affiant was instructed by said Shelley J. Higgins to ascertain the time, by law and equity rules of said District Court, within which cross-respondents were required to file their respective answers to said Cross-Bill; that affiant made diligent search of the United States Statutes, Codes and Rules of the District Court of the United States, and that in the course of said search affiant examined Rules 12, 16 and 31 of the Equity Rules of courts of equity of the United States; that upon a reading of said rules, affiant was of the opinion that Rule 16 provided the time within which a Cross-Bill should be answered in said Court, and that said time prescribed by said rule was twenty days which a cross-respondent had to file an answer to a cross-bill;

That affiant in reading Rule 31 was misled by the use of the words "set-off" and "counterclaim" and was of the opinion, after reading said rule, that it was not applicable to a cross-bill;

Affiant further avers that he immediately conferred with an attorney residing in said city whom he knew had had considerable practice before the United States Courts, to-wit: one Arthur F. H. Wright, and that affiant was then and there informed by said Arthur F. H. Wright that it was his opinion that a cross-respondent had twenty days within which to answer a cross-bill; that thereupon affiant advised the said Shelley J. Higgins that the rules of equity required an answer to said cross-bill to be filed within twenty days;

That, relying upon said information given by affiant, the said Shelley J. Higgins prepared answers to said Cross-Bill on behalf of the said cross-respondents, Security Trust & Savings Bank of San Diego and M. G. Tadlock and caused the same to be verified and placed in the United States mail, addressed to the Clerk of the United States District Court at Los Angeles, California; that said answers to said Cross-Bill were placed in the United States mail within the said period of twenty days from the 29th day of May, 1936, the day when affiant received through the mail a copy of said Cross-Bill; that said verified answers to said Cross-Bill were placed in the United States mail, addressed as above stated, to the Clerk of the United States District Court as follows:

The Answer of Security Trust & Savings Bank of San Diego, cross-respondent, on the 15th day of June, 1936;

The Answer of M. G. Tadlock, cross-respondent, on the 17th day of June, 1936;

That the said verified Answers of said cross-respondents and each of them, in the opinion of affiant, present a meritorious defense to the allegations and matters alleged and pleaded in said Cross-Bill of said cross-complainants, and that, unless the said verified answers are permitted to stand and the issues raised by said verified answers and said Cross-Bill are tried on their merits, said cross-respondent~~a~~ herein named will suffer a great injustice and a failure of equity; that said default was entered as a result of inadvertence and excusable neglect on the part of this affiant and not through any fault or failure of said cross-respondents.

Further affiant saith not.

J F DuPaul

Subscribed and sworn to before me, this 20th day of June, 1936.

[Seal]

F. E. Lindley

Notary Public in and for the County of San Diego,
State of California.

[TITLE OF COURT AND CAUSE.]

AFFIDAVIT OF SHELLEY J. HIGGINS IN SUPPORT OF MOTION TO SET ASIDE DEFAULT.

STATE OF CALIFORNIA)
) ss.
 County of San Diego)

SHELLEY J. HIGGINS, being first duly sworn, deposes and says:

That he is, and during all of the times herein mentioned has been, an attorney at law, authorized to practice in all the Courts of the State of California and in the District Court of the United States, for the Southern District of California, Central Division; that during the times herein mentioned up to May 1, 1936, affiant was a member of the law firm of Hamilton, Lindley & Higgins, and since said May 1st has been and now is a member of the law firm of Lindley & Higgins; that up to said 1st day of May, 1936, the law firm of Hamilton, Lindley & Higgins, together with J. F. DuPaul, an employee and associate of said firm, was employed to and did represent Security Trust & Savings Bank of San Diego and M. G. Tadlock, cross-respondents in the above entitled matter; that since said May 1, 1936, the firm of Lindley & Higgins, together with said J. F. DuPaul, have been employed to and do represent the said cross-respondents herein named;

That during all of the times herein mentioned, affiant has been in active charge and supervision of the litigation in the District Court of the United States, For the South-

ern District of California, Central Division, entitled "The Eagle, Star and British Dominions, a British Corporation, Complainant, vs. M. G. Tadlock, et al, Defendants, No. Eq-886-Y";

That on or about the 12th day of April, 1936, the cross-respondent Security Trust & Savings Bank of San Diego, a Corporation, filed an Answer to the Complaint in Interpleader in the above entitled action, and with said Answer filed a Cross-Complaint or Bill, in which Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, a co-partnership, were named as defendants, with other defendants; that on the 29th day of May, 1936, there was received in the office of Lindley & Higgins, through the United States mail, a copy of the Answer of said Matt J. Walsh and Frank E. Garbutt to said Cross-Complaint or Bill of said Security Trust & Savings Bank of San Diego, together with a Cross-Bill of respondents Matt J. Walsh and Frank E. Garbutt, wherein said M. G. Tadlock and Security Trust & Savings Bank of San Diego were named as defendants or cross-respondents with other defendants and cross-respondents;

That affiant requested said J. F. DuPaul to ascertain immediately the time within which it was necessary for cross-respondents M. G. Tadlock and Security Trust & Savings Bank of San Diego to answer said Cross-Bill of said Cross-Complainants Matt J. Walsh and Frank E. Garbutt; that shortly thereafter affiant was informed by said J. F. DuPaul that under the rules of equity practiced in the above entitled Court, the said cross-respondents had twenty days within which to file said Answer to said Cross-Bill;

That affiant, believing that he had been correctly informed as to the rules of said equity in said Court, providing the time within which an answer to a cross-bill had to be filed, prepared answers for both of said cross-respondents M. G. Tadlock and Security Trust & Savings Bank of San Diego, and caused the same to be verified and filed with the Clerk of the United States District Court For the Southern District of California, by depositing said verified answers in the United States mail addressed to said Clerk, at the Federal Building in the City of Los Angeles, California; that the verified answer of said cross-respondent Security Trust & Savings Bank of San Diego was deposited in the United States mail addressed to said Clerk on the 15th day of June, 1936, within the twenty-day period from said May 29, 1936, and the verified answer of said cross-respondent M. G. Tadlock was deposited in the United States mail, addressed to the Clerk of said Court on the 17th day of June, 1936, and in each instance, on the said same day, copies of said verified answers were deposited in the United States mail addressed to counsel for said cross-complainants, at his office in the said City of Los Angeles;

On the 17th day of June, 1936, on the afternoon of said day, there was received through the United States mail at the office of said Lindley & Higgins, a communication signed by Lloyd S. Nix, counsel for said cross-complainants Matt J. Walsh and Frank E. Garbutt, in which communication it was stated:

“The answer of Security Trust & Savings Bank of San Diego to the cross-bill of Garbutt-Walsh has been received.

“On Friday, June 12, 1936, default was entered, hearing had before Judge Yankwich, the claim of Garbutt-Walsh established and decree ordered and entered in favor of Garbutt-Walsh in the amount prayed for in their cross-bill.”

That thereupon, affiant made search himself of the rules of equity of the United States District Court and learned for the first time of the existence of Rule 31; that affiant has had no experience in Federal Equity practice wherein it has been necessary to file an answer to a cross-bill, and it was not until the said 17th day of June, 1936, that affiant knew that a ten-day period had been prescribed within which an answer to a cross-bill in equity had to be filed;

That in affiant's opinion said default was entered as a result of misunderstanding, inadvertence and excusable neglect, and affiant further avers that unless said default is set aside and any decree ordered and entered as a result of said default set aside, cross-respondents herein named will suffer injustice through no fault of their own;

Affiant further avers that the issues raised by the cross-complaint of the cross-respondents herein and the answer of said cross-complainants to said cross-bill of said cross-respondents raise issues of law, equity and fact which are identical and the same, in our opinion as those which would be raised by the cross-bill of said cross-complainants, Garbutt-Walsh, and the answers of the cross-respondents herein, which cross-respondents seek to have stand by this Motion and Affidavit;

That affiant further avers that if this default is not set aside and cross-complainants Garbutt-Walsh are permitted

to have a decree directing the payment of said insurance moneys described in the cross-bill of said cross-complainants Garbutt-Walsh, and that subsequently it should be decided by this Honorable Court that the cross-respondents herein are entitled to recover on their cross-complaint or bill and a decree rendered in their favor, said procedure will result in confusion, vexatious delays, embarrassment for all parties concerned, and will prevent all parties to this action from securing justice and equity;

Affiant further avers that cross-complainants Matt J. Walsh and Frank E. Garbutt will suffer no inconvenience, loss, embarrassment or injury by setting said default aside and permitting the answers of said cross-respondents to stand, because of the fact, as hereinabove alleged, the same identical issue must be tried on the cross-complaint and bill of cross-respondents, which cross-complaint or bill has heretofore been answered by said Matt J. Walsh and Frank E. Garbutt;

That said verified answers of said cross-respondents and each of them, heretofore filed with the Clerk as hereinabove set forth, in the opinion of affiant, present a meritorious defense to the allegations and matters alleged and pleaded in said Cross-Bill of said Cross-Complainants.

Further affiant saith not.

Shelley J. Higgins

Subscribed and sworn to before me, this 20th day of June, 1936.

[Seal]

F. E. Lindley

Notary Public in and for the County of San Diego,
State of California.

[Endorsed]: Filed Jun. 22, 1936

[TITLE OF COURT AND CAUSE.]

COUNTER-AFFIDAVIT IN OPPOSITION TO
MOTION TO SET ASIDE DEFAULT

UNITED STATES OF AMERICA,)

(ss.

Southern District of California.)

LLOYD S. NIX, being first duly sworn, deposes and says: That he is the solicitor for the cross-complainants, Garbutt-Walsh, herein; that default was taken in the above entitled cause pursuant to Equity Rule 31 on the 12th day of June, 1936, and that the cause thereafter came on for hearing, and was heard by the court, evidence both oral and documentary was introduced, findings of fact and conclusions of law were duly made and filed, and the decree of the court thereon entered; that costs were taxed in favor of cross-complainants and against cross-respondents in the sum of \$42.00, and that the amount awarded cross-complainants by said decree was paid out of the registry of the court in accordance therewith.

That the envelopes in which the respective proposed answers of cross-respondents Tadlock and Security Trust & Savings Bank were forwarded to this affiant are post-marked at San Diego, California, June 17, 1936, 6 P. M. and June 15, 1936, 6 P. M. respectively.

That neither of said answers presents a meritorious defense to the cross-bill of said cross-complainants here-

in, and, would, if allowed to be filed, be subject to motions to strike as being evasive and not responsive, scandalous and impertinent, and imperfect and insufficient.

WHEREFORE, affiant prays that said motion be denied.

Lloyd S. Nix

Subscribed and sworn to before me this 29th day of June, 1936.

[Seal]

Lilian M. Fish

NOTARY PUBLIC in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Jun. 29, 1936

At a stated term, to wit: The February Term, A. D. 1936, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 1st day of July in the year of our Lord one thousand nine hundred and thirty-six.

Present:

The Honorable: Leon R. Yankwich, District Judge.

The Eagle, Star and British Dominions,)	
etc.,)	
)	Plaintiff
)	vs.
)	No. Eq. 886-Y
)	
M. G. Tadlock, et al,)	
)	Defendants.

The motion of Cross-Respondents Security Trust & Savings Bank of San Diego and M. G. Tadlock to set aside the default having been heretofore argued and submitted: the Court having considered, now orders that the motion to set aside the default judgment be, and said motion is denied.

[TITLE OF COURT AND CAUSE.]

SUMMONS AND SEVERANCE

TO: THE EAGLE, STAR AND BRITISH DOMINIONS, a British Corporation, Complainant, and to CHALMERS GRAHAM, Attorney for said Complainant; to J. J. CAMILLO, Cross-Respondent, and to FRANK POMERANZ, his Attorney; to HARBOR BOAT BUILDING COMPANY, a Corporation, Cross-respondent, and to HANSEN & SWENEY, its attorneys; and to DAVID C. CAMPBELL and GEORGE E. CAMPBELL, doing business under the firm name and style of THE CAMPBELL MACHINE CO., a Corporation, Cross-respondent, and to JOHN W. HOLLER, their attorney, and to each of you:

YOU ARE HEREBY INVITED to join with Cross-respondents M. G. TADLOCK and SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, A Corporation, on or before the 7th day of September, 1936, to prosecute an appeal in the above entitled cause, returnable to the United States Circuit Court of Appeals for the Ninth *District*, to reverse the Order denying the Motion to set aside the default and the Decree based thereon, entered on the 1st day of July, 1936, and the Decree in favor of Cross-complainants MATT J. WALSH and FRANK E. GARBUTT, doing business under the firm name and style of GARBUTT-WALSH, rendered on the 12th day of June, 1936, against us, or you will be deemed to have

acquiesced in the said Order and Decree, and we shall prosecute the said appeal without joining you as parties thereto.

Lindley & Higgins

J. F. Du Paul

Attorneys for Cross-Respondents M. G. Tadlock and Security Trust & Savings Bank of San Diego, A Corporation.

SERVICE of the above is accepted this 31st day of August, 1936.

Frank Pomeranz

Attorneys for Cross-Respondent J. J. Camillo

John W. Holler

per E. S.

Attorney for Cross-Respondents David C. Campbell and George E. Campbell, doing business under the firm name and style of The Campbell Machine Co., a Corporation.

[Endorsed]: Filed Sep. 8, 1936

[TITLE OF COURT AND CAUSE.]

MOTION FOR SEVERANCE ON APPEAL

Come now M. G. Tadlock and SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Corporation, Cross-Respondents in the above entitled cause, and state and show to the Court that they have filed their Assignment of Errors and Petition for allowance of appeal from the Order denying the Motion to set aside the default and the Decree based thereon, entered in the above entitled cause on July 1st, 1936, and from the Decree in favor of Cross-complainants against there Cross-respondents, entered in the above entitled cause on June 12th, 1936;

That demand and notice to join in said appeal has been duly made and served upon each and all of their co-Respondents; that each and all of said co-Respondents have failed, neglected and refused to join in said appeal, and have been duly notified to appear in the above entitled Court and cause on September 14, 1936, and appeal, or join in said appeal, or show cause why an Order of Severance should not be made against them, barring their right to prosecute an appeal or appeals in the above entitled cause.

WHEREFORE, M. G. TADLOCK and SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Corporation, Cross-respondents herein, PRAY the Court for an Order of Severance from all their co-Cross-Respondents, for the purpose of an appeal to the United States

Circuit Court of Appeals for the Ninth Circuit from the Order denying Motion to set aside default and Decree based thereon, entered on the 1st day of July, 1936, and from the Decree entered in favor of Cross-complainants, entered herein on the 12th day of June, 1936, and such other and further orders as may be proper in the premises.

Lindley & Higgins

J. F. Du Paul

Attorneys for Cross-Respondents M. G. Tadlock and Security Trust & Savings Bank of San Diego, A Corporation.

[Endorsed]: Filed Sep. 8, 1936.

[TITLE OF COURT AND CAUSE.]

NOTICE OF MOTION FOR SEVERANCE

To the Cross-Respondents above named, and their attorneys, solicitors, and counsel of record:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE: That M. G. TADLOCK and SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Corporation, Cross-respondents in the above entitled action, have filed in the above entitled court and cause their Assignment of Errors and their joint Petition for the allowance of a joint appeal from the Order denying the Motion to set aside default and the Decree based thereon, entered July 1st, 1936, and from the Decree in favor of Cross-complainants, entered in the above entitled cause on the 12th day of June, 1936, to the United States Circuit Court of Appeals for the Ninth Circuit;

That they have also filed in said court and cause their joint Motion for severance on appeal from said Order and said Decree from you and each of you, as cross-respondents for the purposes of said appeal;

That said Petition and Motion will be called up for hearing, allowance and order in said Court, at the Court Room in the City of Los Angeles, California, on September 14, 1936, at ten o'clock A. M., or as soon thereafter as convenient to the Court; and this is to demand of you that you join in said appeal, or be and appear in said Court at said time and place and show cause why an Order

of Severance should not be made against you, barring you and each of you from taking or prosecuting separate appeals in said cause;

True copies of said Motion for Severance and Petition for allowance of appeal are hereto attached.

Lindley & Higgins

J. F. Du Paul

Attorneys for Cross-Respondents M. G. Tadlock and Security Trust & Savings Bank of San Diego, A Corporation.

SERVICE of the above Notice acknowledged and accepted this 7th day of September, 1936.

Frank Pomeranz, Per E. S.

Attorney for Cross-Respondent J. J. Camillo

Sloane & Steiner

John W. Holler

Attorneys for Cross-Respondents David C. Campbell and George E. Campbell doing business under the firm name and style of The Campbell Machine Co.

[Endorsed]: Filed Sep. 8, 1936.

[TITLE OF COURT AND CAUSE.]

PETITION FOR APPEAL WITH PRAYER FOR
SEVERANCE

TO THE HONORABLE LEON R. YANKWICH,
Judge of the District Court, aforesaid:

The above named cross-respondents, M. G. TADLOCK and SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, A Corporation, feeling aggrieved by the Order denying the Motion of the cross-respondents herein named to set aside the default and the Decree based thereon in the above entitled action, entered on the 1st day of July, 1936, and feeling aggrieved by the Decree rendered by said Court in favor of the cross-complainants MATT J. WALSH and FRANK E. GARBUTT, made and entered on June 12, 1936 in the above entitled action, hereby appeal from said Order denying said motion to set aside said default and said decree, and from said Decree to the United States Circuit Court of Appeals for the Ninth Circuit;

That the errors upon which said appeal is based are contained in the Assignment of Errors filed herein;

That petitioners pray that their appeals be allowed, and that a Citation be issued in accordance with law; and that an authenticated transcript of the record proceedings upon said Motion and Order and upon said Decree be forwarded to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California;

And your petitioners further pray that an Order be made fixing the amount of security to be given by appellants, conditioned as provided by law ;

Petitioners further aver that cross-respondents J. J. CAMILLO, HARBOR BOAT BUILDING COMPANY, a Corporation, DAVID C. CAMPBELL and GEORGE E. CAMPBELL, doing business under the firm name and style of THE CAMPBELL MACHINE CO., a Co-partnership, have refused to join in this appeal, and petitioners further pray that, after notice to said cross-respondents herein named has been served upon them and an opportunity for them to appear has been given to show cause why they should not join in this appeal or sever their interests from the interests of these appellants, that an Order be made by this Honorable Court, severing their interests from the interests of these appellants.

Dated: September 5th, 1936.

Lindley & Higgins

J. F. Du Paul

Solicitors for Appellants

[Endorsed]: Filed Sep. 8, 1936.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION IN EQUITY

THE EAGLE, STAR AND BRITISH DOMINIONS, a British Corporation,

Complainant,

vs.

M. G. TADLOCK, SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Corporation, MATT J. WALSH and FRANK E. GARBUTT, doing business under the firm name and style of GARBUTT-WALSH, a co-partnership, J. J. CAMILLO, HARBOR BOAT BUILDING COMPANY, a Corporation, DAVID C. CAMPBELL and GEORGE E. CAMPBELL, doing business under the firm name and style of THE CAMPBELL MACHINE CO., a Corporation,

Defendants,

No. EQ. 886-Y

ASSIGNMENT OF ERRORS

.....)

MATT J. WALSH and FRANK)
 E. GARBUTT, doing business un-)
 der the firm name and style of)
 GARBUTT-WALSH,)

Cross-Complainants,)

vs.)

M. G. TADLOCK, SECURITY)
 TRUST & SAVINGS BANK OF)
 SAN DIEGO, a Corporation, J.)
 J. CAMILLO, HARBOR BOAT)
 BUILDING COMPANY, a Corpo-)
 ration, DAVID C. CAMPBELL)
 and GEORGE E. CAMPBELL, do-)
 ing business under the firm name)
 and style of THE CAMPBELL)
 MACHINE CO., a Co-partnership,)

Cross-Respondents.)

Come now the Cross-Respondents M. G. TADLOCK and SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, A Corporation, and file the following Assignment of Errors upon which they and each of them will rely upon appeal to the United States Circuit Court of Appeals, for the Ninth Circuit:

1. The Court erred in overruling the Cross-Respondents' Motion to set aside the Default pro confesso and the Decree based thereon;

2. The Court was without jurisdiction to render a Decree in favor of Cross-Complainants based upon a pro

confesso Order after default within thirty days from the date of said Order taking the default;

3. The Court erred in overruling said Motion by inadvertently failing to consider the meritorious defense presented by the verified Answers of these Cross-Respondents to the Complaint of Cross-Complainants;

4. The Court was without jurisdiction to determine the issues raised by the Cross-Bill between Cross-Complainants and Cross-Respondents, all of whom were citizens of the same state;

WHEREFORE, these Cross-Respondents pray that the Order denying said Motion in said cause be reversed and the Decree granted in favor of said Cross-Complainants be reversed, and the cause remanded with instructions to the trial Court as to further proceedings herein, and for such other and further relief as may be just in the premises.

Dated: September 5th, 1936.

M. G. Tadlock

SECURITY TRUST & SAVINGS
BANK OF SAN DIEGO, A Corporation,

By A. J. Sutherland

Cross-Respondents.

Lindley & Higgins

J. F. Du Paul

Solicitors for said Cross-Respondents.

[Endorsed]: Filed Sep. 8, 1936.

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING APPEAL AND SEVERANCE

M. G. TADLOCK and SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, A Corporation, Cross-Respondents in the above entitled action, having filed herein their Petition for Appeal from the Order denying the Motion to set aside the default and the Decree based thereon, entered on July 1st, 1936, and the Decree in favor of cross-complainants MATT J. WALSH and FRANK E. GARBUTT, doing business under the firm name and style of GARBUTT-WALSH, made and entered June 12th, 1936, on the 8th day of September, 1936, now, on motion of LINDLEY & HIGGINS and J. F. DuPAUL, attorneys and solicitors for petitioners,

IT IS ORDERED: That an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Order denying motion to set aside the default and the Decree based thereon, entered July 1st, 1936, and from the Decree in favor of cross-complainants made and entered June 12th, 1936, be and the same is hereby allowed; and that a certified transcript of the record be forwarded to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California;

IT IS FURTHER ORDERED: That appellants furnish a bond on appeal in the amount of \$500.00 Dollars, the same to operate as a cost bond only;

And it further appearing that J. J. CAMILLO, HARBOR BOAT BUILDING COMPANY, a Corporation, DAVID C. CAMPBELL and GEORGE E. CAMPBELL, doing business under the firm name and style of THE CAMPBELL MACHINE CO., a co-partnership, have declined to join the said appeal; and it further appearing that said J. J. Camillo, Harbor Boat Building Company, a Corporation, David C. Campbell and George E. Campbell, doing business under the firm name and style of The Campbell Machine Co., a co-partnership, were notified in writing on the 7th day of September, 1936, to either join in said appeal or decline to join in said appeal;

And it further appearing that said cross-respondents J. J. Camillo, Harbor Boat Building Company, a Corporation, David C. Campbell and George E. Campbell, doing business under the firm name and style of The Campbell Machine Co., a co-partnership, have not appeared, but have severed themselves from the said petitioners; and the said petitioners are granted their appeals as aforesaid and their interests are severed in said appeal from the other cross-respondents herein named.

Dated: September 14th, 1936.

BY THE COURT.

Leon R Yankwich,
Judge

[Endorsed]: Filed Sep. 14, 1936.

[TITLE OF COURT AND CAUSE.]

BOND

KNOW ALL MEN BY THESE PRESENTS:

That WE, SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, A Corporation, as Principal, and A. J. Sutherland and Howard Ritter as Sureties, are held and firmly bound unto MATT J. WALSH and FRANK E. GARBUTT, doing business under the firm name and style of GARBUTT-WALSH, Cross-Complainants above named, in the sum of FIVE HUNDRED DOLLARS (\$500.00), to which payment, well and truly to be made, we bind ourselves jointly and severally, our heirs, executors, successors and assigns respectively, firmly by these presents.

SEALED with our seals and dated the 12th day of September, 1936.

WHEREAS, the Cross-Respondents M. G. TADLOCK and SECURITY TRUST & SAVINGS BANK OF SAN DIEGO, a Corporation, have prosecuted their appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse that certain Order denying the Motion of said Cross-Respondents to set aside default and the Decree based thereon, which said Order was entered on the 1st day of July, 1936, and to reverse the Decree rendered by said Court in favor of Cross-Complainants Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of GARBUTT-WALSH, made and entered on the 12th day of June, 1936;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my Office in the County of San Diego, the day and year in this certificate first above written.

[Seal] Emma Geradehand
Notary Public in and for the County of San Diego,
State of California.

My Commission expires Oct. 28, 1937

JUSTIFICATION

STATE OF CALIFORNIA)
) ss.
County of San Diego)

A. J. Sutherland a Surety on the annexed Bond, being duly sworn, deposes and says:

That he is a resident of, and a freeholder in said District of California; that he is worth at least the sum of \$500.00 over and above all his just debts and liabilities in property subject to execution and sale, and that his property consists of real and personal property located in San Diego, California;

A. J. Sutherland
Surety.

Subscribed and sworn to before me, this 12th day of September, 1936.

[Seal] Emma Geradehand
Notary Public in and for the County of San Diego,
State of California

JUSTIFICATION

STATE OF CALIFORNIA)
) ss.
 County of San Diego)

HOWARD RITTER, a Surety on the annexed Bond, being duly sworn, deposes and says:

That he is a resident of, and a freeholder is said District of California; that he is worth at least the sum of \$500.00 over and above all his just debts and liabilities in property subject to execution and sale, and that his property consists of real and personal property located in San Diego, California;

Howard Ritter
 Surety.

Subscribed and sworn to before me, this 12th day of September, 1936.

[Seal] Emma Geradehand
 Notary Public in and for the County of San Diego,
 State of California

The within Bond is hereby approved this 14th day of September A. D. 1936

LEON R. YANKWICH
 District Judge.

[Endorsed]: Filed Sep. 14, 1936.

[TITLE OF COURT AND CAUSE.]

PRAECIPE

To; R. S. ZIMMERMAN, Clerk of the United States District Court, For the Southern District of California, Central Division:

You will please incorporate in the Transcript of record on appeal to the United States Circuit Court of Appeals, for the Ninth Circuit in the above entitled cause, the following:

1. Complaint of The Eagle, Star and British Dominions, a British Corporation;
2. Answers of M. G. Tadlock and of Security Trust & Savings Bank of San Diego, A Corporation, and Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, a Co-Partnership;
3. Cross-Bill of Security Trust & Savings Bank of San Diego, A Corporation;
4. Answer of Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, a Co-Partnership, to said Cross-Bill;
5. Cross-Bill of Cross-Complainants Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh, A Co-partnership;
6. Answers of Cross-Respondents M. G. Tadlock and Security Trust & Savings Bank of San Diego, A Corporation, to said Cross-Bill of said Cross-Complainants Matt J. Walsh and Frank E. Garbutt;

7. Notice of Motion to Set Aside Default of Cross-Respondents M. G. Tadlock and Security Trust & Savings Bank of San Diego, a Corporation;
8. Motion to Set Aside Default of Cross-Respondents M. G. Tadlock and Security Trust & Savings Bank of San Diego, a Corporation;
9. Affidavit of Shelley J. Higgins in Support of Motion to Set Aside Default;
10. Affidavit of J. F. DuPaul in Support of Motion to Set Aside Default;
11. Order of Court denying said Motion, entered on July 1st, 1936;
12. Decree in Favor of Cross-Complainants, entered June 12, 1936; also Findings of Fact and Conclusions of Law;
13. Summons and Severance;
14. Notice of Motion for Severance.
15. Motion for Severance;
16. Petition for Appeal and Severance; Assignments of Error;
17. Order Allowing Appeal and Severance;
18. Citation and Bond;
19. Written Opinion of Judge Leon R. Yankwich, filed April 30, 1936.

Dated: September 14th, 1936

Lindley & Higgins

J. F. Du Paul

Solicitors for Appellants.

[TITLE OF COURT AND CAUSE.]

AFFIDAVIT OF SERVICE OF PRAECIPE.

STATE OF CALIFORNIA, (
) ss.
County of Los Angeles. (

STANLEY N. BARNES, being first duly sworn, on oath says:

That on the 18th day of September, 1936, he personally Served on Lloyd S. Nix, solicitor for appellees (originally cross-complainants) the attached praecipe, by delivering to and leaving with said Lloyd S. Nix personally, in the County of Los Angeles, in the Southern District of California, a full, true, and correct copy of said praecipe.

Stanley N. Barnes

Subscribed and sworn to before me this 26 day of September, 1936.

[Seal] Marguerite Thompson
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed Sep. 26, 1936.

[TITLE OF COURT AND CAUSE.]

PRAECIPE.

To R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, Central Division:

You will please incorporate in the Transcript of record on appeal to the United States Circuit Court of Appeals, for the Ninth Circuit in the above entitled cause, the following:

1. Interlocutory Decree dated May 11, 1936;
2. Affidavit of Service by Mail of Answer of Cross-Defendants and Cross-Bill of Respondents Garbutt-Walsh dated June 1, 1936;
3. Motion for Entry of Default and for Order of Reference dated June 10, 1936;
4. Order or Decree that Cross-Bill be taken as Confessed dated June 12, 1936;
5. Counter-Affidavit (of Lloyd S. Nix) in Opposition to Motion to Set Aside Default dated June 29, 1936;
6. Motion for Reargument or Rehearing (of Complainant Eagle, Star and British Dominions, a British Corporation).

Dated this 24th day of September, 1936.

Lloyd S. Nix

Solicitor for Appellees Garbutt-Walsh.

[Endorsed]: Filed Sep. 24, 1936.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 199 pages, numbered from 1 to 199 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation and affidavit of service of citation; complaint; answer of M. G. Tadlock to complaint; answer and cross-complaint of Security Trust & Savings Bank of San Diego to complaint; opinion; motion to dismiss complaint; interlocutory decree; answer of Matt J. Walsh and Frank E. Garbutt, etc., to cross-complaint on bill of Security Trust and Savings Bank of San Diego; cross bill of respondents Matt J. Walsh and Frank E. Garbutt, doing business under the firm name and style of Garbutt-Walsh; affidavit of service by mail of answer of cross-defendants and cross-bill of respondents Garbutt-Walsh; motion for entry of default and for order of reference; order or decree that cross-bill be taken as confessed; findings of fact and conclusions of law; decree; answer to cross-bill of respondents Matt J. Walsh and Frank E. Garbutt, etc.; answer to cross-bill of respondents Matt J. Walsh and Frank E. Garbutt, etc.; motion to set aside default; notice of motion to set aside default; affidavit of J. F. Du Paul in support of motion to set aside default, and affidavit of Shelley J. Higgins in support of motion to set aside default; counter affidavit in opposition to motion to set aside default; order of July 1, 1936, denying

motion to set aside default judgment; summons and severance; motion for severance on appeal; notice of motion for severance; petition for appeal with prayer for severance; assignment of errors; order allowing appeal and severance; bond; praecipe; counter-praecipe; I do further certify that no answers of Matt J. Walsh and Frank E. Garbutt or any motion for reargument or rehearing of complainant were filed in this court.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ _____ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this day of November, in the year of Our Lord One Thousand Nine Hundred and Thirty-six and of our Independence the One Hundred and Sixty-first.

R. S. ZIMMERMAN,

Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.

